

Corporation tax: credit for bank levy. FA92 s45; FA95 s56; FA97 s146(1) and Sch9 Ptl par16(1) 487.—(1) (a)
In this section—

“accounting profit” means the amount of profit, after taxation and before extraordinary items—

(i) shown in the profit and loss account—

(I) in the case of a company resident in the State, which is required under section 148 of the Companies Act, 1963 , to be laid before the annual general meeting of the company, or which would be so shown but for subsection (4) of section 149 of that Act, and

(II) in the case of a company not resident in the State and carrying on a trade in the State through a branch or agency, of that branch or agency and which is certified by the auditor appointed under section 160 of the Companies Act, 1963 , or under the law of the state in which the company is incorporated and which corresponds to that section, as presenting a true and fair view of the profit or loss attributable to that branch or agency,

(ii) reduced by the amount of such profit as is attributable to—

(I) dividends received from companies resident in the State which are members of the group of which that company is a member,

(II) gains on disposal of capital assets,

(III) relevant trading operations within the meaning of section 446,

(IV) trading operations carried on outside of the State and in respect of which the company is chargeable to corporation tax in the State and to tax on income in another state, and

(V) dividends received from companies not resident in the State,

and

(iii) increased—

(I) as respects income from sources specified in subparagraphs (III), (IV) and (V) of paragraph (ii), by an amount determined by the formula—

$$100 \frac{R}{T} \times T$$

where—

T is the corporation tax chargeable in respect of that income computed in accordance with the provisions

of the Corporation Tax Acts and after allowing relief under Parts 14 and 35, and

R is the rate of corporation tax for the accounting period concerned and to which section 21 relates, but where part of the accounting period falls in one financial year and the other part falls in the financial year succeeding the first-mentioned financial year, R shall be determined by applying the formula specified in section 78 (3)(b), and

(II) by the amount of stamp duty charged under section 64 of the Finance Act, 1989 , section 108 of the Finance Act, 1990 , section 200 of the Finance Act, 1992 , or section 142 of the Finance Act, 1995 , and under section 94 of the Finance Act, 1986 , as has been taken into account in computing that amount of profit, after taxation and before extraordinary items;

“adjusted group base tax”, in relation to a relevant period, means—

(i) an amount determined by the formula—

$$T \times P \div B$$

where—

T is the group base tax,

P is the group profit of the relevant period, and

B is the group base profit,

or

(ii) if it is greater, the group advance corporation tax of the relevant period;

“advance corporation tax”, in relation to a relevant period, means the aggregate of the amounts of advance corporation tax paid or treated as paid by a company, and not repaid, under Chapter 8 of Part 6, in respect of distributions made in accounting periods falling wholly or partly within the relevant period and, where an accounting period falls partly within a relevant period, the aggregate shall include a part of the advance corporation tax so paid proportionate to the part of the accounting period falling within the relevant period;

“base profit”, in relation to a company, means 50 per cent of the aggregate of the amounts of accounting profit of a company for accounting periods falling wholly or partly in the period beginning on the 1st day of April, 1989, and ending on the 31st day of March, 1991, and, where an accounting period falls partly within that period, the aggregate shall include a part of the accounting profit of the accounting period proportionate to the part of the accounting period falling within that period;

“base tax” means 50 per cent of the aggregate of the corporation tax chargeable on a company, exclusive of the corporation tax on the part of the company's profits attributable to chargeable gains and before the

set-off of advance corporation tax under Chapter 8 of Part 6, for accounting periods falling wholly or partly in the period beginning on the 1st day of April, 1989, and ending on the 31st day of March, 1991, and, where an accounting period falls partly within that period, the aggregate shall include a part of the corporation tax so chargeable for the accounting period proportionate to the part of the accounting period falling within that period;

“group advance corporation tax”, in relation to a relevant period, means the aggregate of the amounts of advance corporation tax in relation to the relevant period of companies which throughout the relevant period are members of the group;

“group base profit” means the aggregate of the amounts of base profit of companies which throughout the relevant period are members of the group;

“group base tax” means the aggregate of the amounts of base tax of companies which throughout the relevant period are members of the group, but where the amount of the group base tax is an amount which is—

(i) greater than 43 per cent, or

(ii) lower than 10 per cent,

of the group base profit, computed in accordance with this section but without regard to subparagraphs (III), (IV) and (V) of paragraph (ii), or subparagraph (I) of paragraph (iii), of the definition of “accounting profit”, the group base tax shall be deemed to be an amount equal to 25 per cent of the group base profit as so computed;

“group profit”, in relation to a relevant period, means the aggregate of the amounts of profit of the relevant period of companies which throughout that period are members of the group;

“group tax liability”, in relation to a relevant period, means the aggregate of the amounts of tax liability of the relevant period of companies which throughout that period are members of the group;

“levy payment” means the aggregate of the amounts charged in the year 1992 or in any later year under section 200 of the Finance Act, 1992, or section 142 of the Finance Act, 1995, and which have been paid, on or before the date by which the amounts are payable, by companies which are members of a group;

“profit”, in relation to a relevant period, means the aggregate of the accounting profit, computed on the same basis as that on which the base profit of the company is computed, of a company for accounting periods falling wholly or partly within the relevant period, and, where an accounting period falls partly within a relevant period, the aggregate shall include a part of the accounting profit of the accounting period proportionate to the part of the accounting period falling within that relevant period;

“relevant period”, in relation to a levy payment, means a period beginning on the 1st day of April preceding the date on or before which the levy payment is to be made and ending on the 31st day of March next after that date;

“tax liability”, in relation to a relevant period, means the aggregate of the corporation tax which apart from this section would be chargeable on a company, exclusive of the corporation tax on the part of the company's profits attributable to chargeable gains and before the set-off of advance corporation tax under Chapter 8 of Part 6, for accounting periods falling wholly or partly within the relevant period and, where an accounting period falls partly within that period, the aggregate shall include a part of the corporation tax so chargeable for the accounting period proportionate to the part of the accounting period falling within that period.

(b) For the purposes of this section—

(i) 2 companies shall be deemed to be members of a group if one company is a 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company; but—

(I) in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(A) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade, or

(B) any share capital which it owns indirectly, and which is owned directly by a company for which a profit on a sale of the shares would be a trading receipt,

and

(II) a company which is an assurance company within the meaning of section 706 shall not be a member of a group,

(ii) sections 412 to 418 shall apply for the purposes of this paragraph as they apply for the purposes of Chapter 5 of Part 12,

(iii) a company and all its 75 per cent subsidiaries shall form a group and, where that company is a member of a group as being itself a 75 per cent subsidiary, that group shall comprise all its 75 per cent subsidiaries and the first-mentioned group shall be deemed not to be a group; but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company, and accordingly references to group advance corporation tax, group base profit, group base tax, group profit and group tax liability shall be construed as if they were respectively references to advance corporation tax, base profit, base tax, profit and tax liability of that company,

(iv) the part of a company's profits attributable to chargeable gains for an accounting period shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description,

(v) the income or profit attributable to any trading operations or dividends shall be such amount of the

income or profit as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable, and

(vi) corporation tax chargeable in respect of any income shall be the corporation tax which would not have been chargeable but for that income.

(2) Where for a relevant period in relation to a levy payment the group tax liability exceeds the adjusted group base tax of that relevant period, all or part of the levy payment, not being greater than the excess of the group tax liability over the adjusted group base tax, may be set against the group tax liability of the relevant period in accordance with this section.

(3) (a) In this subsection, “appropriate inspector” has the same meaning as in section 950.

(b) Where under subsection (2) an amount of levy payment may be set against the group tax liability of a relevant period, so much (in this paragraph referred to as “the apportionable part”) of the amount as bears to that amount the same proportion as the tax liability of the relevant period of a company which is a member of the group bears to the group tax liability of the relevant period shall be apportioned to the company, and the companies which are members of the group may, by giving notice in writing to the appropriate inspector within a period of 9 months after the end of the relevant period, elect to have the apportionable part apportioned in such manner as is specified in the notice.

(4) Where an amount is apportioned to a company under subsection (3), that amount shall be set against the tax liability of the relevant period of the company and, to the extent that an amount is so set off, it shall be treated for the purposes of the Corporation Tax Acts as if it were a payment of corporation tax made on the day on which that corporation tax is to be paid; but an amount or part of an amount which is to be treated as if it were a payment of corporation tax may not be repaid to a company by virtue of a claim to relief under the Corporation Tax Acts or for any other reason.

(5) Where under subsection (4) an amount is to be set against the tax liability of a relevant period of a company and the tax liability of the relevant period consists of the aggregate of corporation tax chargeable for more accounting periods than one, the amount shall be set against the corporation tax of each of those accounting periods in the proportion which the corporation tax of the accounting period or the part of the accounting period, as the case may be, and which is included in the tax liability of the relevant period bears to the tax liability of the relevant period.

(6) Where—

(a) the end of an accounting period (in this subsection referred to as “the first-mentioned accounting period”) of a company which is a member of a group does not coincide with the end of the relevant period,

(b) the tax liability of—

(i) one or more accounting periods of the company ending after the end of the first-mentioned accounting period, or

(ii) one or more accounting periods of any other member of the group ending after the end of the first-mentioned accounting period,

is to be taken into account in determining the amount of the levy payment which may be set off under this section against the corporation tax of—

(I) the first-mentioned accounting period, or one or more accounting periods ending before the end of that period, of the company, or

(II) one or more accounting periods of any other member of the group ending on or before the end of the first-mentioned accounting period,

and

(c) on the specified return date) it is not possible—

(i) for the first-mentioned accounting period, or any other accounting period ending before the end of that period, of the company, or

(ii) for one or more accounting periods of any other member of the group ending on or before the end of the first-mentioned accounting period,

to determine the amount of the levy payment which may be so set off,

then, the amount of levy payment which may be set off under this section against the corporation tax of an accounting period shall be taken to be the amount which would have been so set off if a period of 12 months ending on the last day of the most recent accounting period of the parent company (being a member of the group which is not a subsidiary of any other member of the group) which ends in the relevant period were the relevant period; but, where a part only of that period of 12 months falls after the 31st day of March, 1992, the amount to be set off under this subsection shall be reduced to an amount proportionate to the part of that period of 12 months falling after that day.

(7) (a) A company shall deliver, as soon as they become available, such particulars as are required to determine the amount of levy payment which apart from subsection (6) is to be set off against the corporation tax of an accounting period.

(b) Where an amount of levy payment has been set off against corporation tax of an accounting period under subsection (6) and the company delivers such particulars as are required to be delivered in accordance with paragraph (a), the inspector shall adjust any computation or assessment by reference to the difference between these amounts and any amount of corporation tax overpaid shall be repaid and any amount of corporation tax underpaid shall be paid.

(8) (a) An amount of tax to be repaid under subsection (7) shall be repaid with interest in all respects as if it were a repayment of preliminary tax under section 953 (7).

(b) Interest shall not be charged under section 1080 on any amount of tax underpaid under this subsection unless the amount is not paid within one month of the date on which the amount of the underpayment is notified to the chargeable person by the inspector, and the amount of tax so unpaid shall not be treated as part of the tax payable for the chargeable period for the purposes of section 958 (4)(b).