

Implementation of Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. FA91 s36 831.—(1) (a) In this section—

“arrangements” means arrangements having the force of law by virtue of section 826;

“bilateral agreement” means any arrangements, protocol or other agreement between the Government and the government of another Member State;

“company” means a company of a Member State;

“company of a Member State” has the meaning assigned to it by Article 2 of the Directive;

“the Directive” means Council Directive No. 90/435/EEC of 23 July 1990¹ on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;

“distribution” means income from shares or from other rights, not being debt claims, to participate in a company's profits, and includes any amount assimilated to income from shares under the taxation laws of the State of which the company making the distribution is resident;

“foreign tax” means any tax which—

(i) is payable under the laws of a Member State other than the State, and

(ii) (I) is specified in paragraph (c) of Article 2 of the Directive, or

(II) is substituted for and is substantially similar to a tax so specified;

“Member State” means a Member State of the European Communities;

“parent company” means a company resident in the State which owns at least 25 per cent of the share capital of a company not so resident, but where a bilateral agreement contains a provision to the effect—

(i) that a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the share capital of the company not resident in the State is owned by the first-mentioned company, or

(ii) that—

(I) the requirement (being the requirement for the purposes of this definition) that a company resident in the State own at least 25 per cent of the share capital of the company not so resident shall be treated as a requirement that the company so resident holds at least 25 per cent of the voting rights in the company not so resident, or

(II) that requirement shall be so treated and a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the voting rights in the company not resident in the State is held by the first-mentioned company,

then, in its application to a company to which the provision in the bilateral agreement applies, this definition shall apply subject to that provision and shall be construed accordingly.

(b) For the purposes of this section, a company shall be a subsidiary of another company which owns shares or holds voting rights in it where the other company's ownership of those shares or holding of those rights is sufficient for that other company to be a parent company.

(c) A word or expression used in this section and in the Directive has, unless the contrary intention appears, the same meaning in this section as in the Directive.

(2) Subject to subsections (3) and (4), where a parent company receives a distribution chargeable in the State to corporation tax, other than a distribution in a winding up, from its subsidiary—

(a) credit shall be allowed for—

(i) any withholding tax charged on the distribution by the Federal Republic of Germany, the Hellenic Republic or the Portuguese Republic, pursuant to the derogations provided for in Article 5 of the Directive, and

(ii) any foreign tax, not chargeable directly or by deduction in respect of the distribution, which is borne by the company making the distribution, and is properly attributable to the proportion of its profits which is represented by the distribution, in so far as that foreign tax exceeds so much of any tax credit in respect of the distribution as is payable to the parent company by the Member State in which the company making the distribution is resident,

against corporation tax in respect of the distribution to the extent that credit for such withholding tax and foreign tax would not otherwise be so allowed, and

(b) notwithstanding Chapter 2 of Part 4, the distribution shall not be a dividend to which that Chapter applies.

(3) Where by virtue of subsection (2)(a) a company is to be allowed credit for tax payable under the laws of a Member State other than the State, Schedule 24 shall apply for the purposes of that subsection as if—

(a) the provisions of that subsection were arrangements providing that tax so payable shall be allowed as a credit against tax payable in the State, and

(b) references in Schedule 24 to a dividend were references to a distribution within the meaning of this section.

(4) Subsection (2) shall apply without prejudice to any provision of a bilateral agreement.

10.J. No. L225 of 20.8.1990, p.6.