

SCHEDULE 22 Dividends Regarded as Paid Out of Profits Accumulated Before Given Date

Sections 749 and 752

ITA67 Sch12; F(MP) A68 s3(2) and Sch Ptl; CTA76 s140(1) and Sch2 Ptl par28; FA79 s34

1. (1) Subject to paragraph 2, a dividend shall be regarded for the purposes of section 752 and of this Schedule as paid wholly out of profits accumulated before a given date (in this Schedule referred to as “the relevant date”) if—

(a) it is declared for a period falling wholly before the relevant date,

(b) there are no profits of the company arising in the period beginning on the relevant date and ending on the date on which the dividend is payable, or

(c) having regard to paragraph 3, no part is available for payment of the dividend out of such profits of the company as arose in the period beginning on the relevant date and ending on the date on which the dividend is payable.

(2) Subject to paragraph 2, where out of such profits of the company as arose in the period beginning on the relevant date and ending on the date on which the dividend is payable, some part is, having regard to paragraph 3, available for payment of the dividend but the total amount distributed in payment of the net dividend on all the shares of the class in question exceeds that part of the profits, the dividend shall be regarded for the purposes of section 752 and of this Schedule as paid out of profits accumulated before the relevant date to an extent which is the same as the proportion which the excess bears to that total amount.

(3) For the purposes of this Schedule, a dividend which is declared for a period falling partly before and partly after the relevant date shall be regarded as consisting of 2 dividends respectively declared for the 2 parts of the period and of amounts proportionate to each such part.

2. (1) Notwithstanding paragraph 1, a dividend shall not be regarded as paid to any extent out of profits accumulated before the relevant date if—

(a) it became payable within one year from that date, and

(b) in the opinion of the Appeal Commissioners the annual rate of dividend on the shares in question in that year—

(i) is not substantially greater than the annual rate of dividend on those shares in the period of 3 years ending on the relevant date, or

(ii) in a case where the shares in question were acquired in the ordinary course of a business of arranging public issues and placings of shares, represents a yield on the cost to the person receiving the

dividend not substantially greater than the yield obtainable by investing in comparable shares the prices of which are quoted on stock exchanges in the State.

(2) For the purposes of subparagraph (1) (b), the Appeal Commissioners shall have regard to—

(a) all dividends paid on the shares in the respective periods,

(b) any share issue made in those periods to holders of the shares, and

(c) in a case under subparagraph (1) (b) (i) where the shares were not in existence 3 years before the relevant date, the dividends paid on, and any share issue made to holders of, any shares surrendered in exchange for the first-mentioned shares or in right of which the first-mentioned shares were acquired,

and shall take such averages and make such adjustments as may appear to them to be required for a fair comparison.

3. (1) The part of the profits of the company arising in the period beginning on the relevant date and ending on the date on which a dividend is payable which is available for payment of the dividend shall be determined in accordance with subparagraphs (2) to (5).

(2) There shall be deducted from those profits such amount, whether fixed or proportionate to the amount of the profits, as in the opinion of the Appeal Commissioners ought justly and reasonably to be treated as set aside for payment of dividends on any other class of shares in the company, having regard to the respective rights attaching to the shares and on the assumption that the total amount available for distribution by means of net dividend on all the shares in the company over any period will be proportionately greater or less than the profits of the company arising in the period beginning on the relevant date and ending on the date on which the dividend mentioned in subparagraph (1) is payable, according as the first-mentioned period is longer or shorter than the second-mentioned period.

(3) In a case where, in the period beginning on the relevant date and ending on the date on which the dividend is payable, no previous dividend became payable on the shares of the class in question, the whole of the profits of the company arising in the period, less any deduction to be made under subparagraph (2), shall be regarded as available for payment of the dividend.

(4) If any previous dividend became payable on the same shares in the period beginning on the relevant date and ending on the date on which the dividend is payable, there shall be determined in accordance with the preceding paragraphs the extent, if any, to which that previous dividend is to be regarded as paid out of profits accumulated before the relevant date, and the profits of the company arising in that period, less any deduction to be made under subparagraph (2), shall be regarded as primarily available for payment of the net amount of that previous dividend in so far as it is not regarded as paid out of profits accumulated before the relevant date and only such balance, if any, as remains shall be regarded as available for payment of the later dividend.

(5) Where under subparagraph (2) the Appeal Commissioners are to determine what should be set aside for payment of dividends on shares of any class, and dividends on shares of that class have been treated under

this Schedule as paid to any extent out of profits accumulated before the relevant date, the Appeal Commissioners may take that fact into account and reduce the amount to be so set aside accordingly.

4. (1) For the purposes of this Schedule, the profits of a company arising in a given period (in this paragraph referred to as “the specified period”) shall be determined in accordance with subparagraphs (2) and (3).

(2) Those profits shall be the income of the company for the specified period diminished by—

(a) the income tax actually paid by the company for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period, including any surtax borne by the company under section 530 of, and Schedule 16 to, the Income Tax Act, 1967 ,

(b) the corporation profits tax payable by the company for any accounting period in the specified period,

(c) the corporation tax and 441) payable by the company for any accounting period in the specified period, and for this purpose the tax credit comprised in any franked investment income shall be treated as corporation tax payable by the company for the accounting period in which the distribution was received, and

(d) the capital gains tax payable by the company for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period;

but where relief has been afforded to the company under section 360 of the Income Tax Act, 1967 , or under section 826 or 833, references in this subparagraph to tax actually borne or to tax payable shall be construed as references to the tax which would have been borne or payable if that relief had not been given.

(3) In ascertaining for the purposes of this paragraph the amount of income tax, corporation profits tax and corporation tax by which the income of the company for the specified period is to be diminished, any tax on the amount to be deducted under clause (g) or (h) of paragraph 5(3) shall be disregarded.

5. (1) For the purposes of this Schedule, the income of the company for a given period (in this paragraph referred to as “the specified period”) shall be determined in accordance with subparagraphs (2) and (3).

(2) There shall be computed the aggregate amount of—

(a) any profits or gains arising in the specified period from any trade carried on by the company computed in accordance with the provisions applicable to Case I of Schedule D,

(b) any income (including any franked investment income) arising in the specified period (computed in accordance with the Income Tax Acts or, in the case of franked investment income, in accordance with the Corporation Tax Acts), other than profits or gains arising from any trade referred to in clause (a), and

(c) any capital profits arising in the specified period (whether or not chargeable to capital gains tax

or corporation tax).

(3) There shall be deducted from the aggregate amount determined under subparagraph (2) the sum of the following amounts—

(a) any loss sustained by the company in the specified period in any trade referred to in subparagraph (2) (a) (computed in the same manner as profits or gains under the provisions applicable to Case I of Schedule D),

(b) any group relief given to the company in accordance with Chapter 5 of Part 12 for any accounting period in the specified period,

(c) any allowances for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period in respect of any such trade under sections 241, 244(3) and 245, Chapter III of Part XIV, and Parts XV and XVI, of the Income Tax Act, 1967 ,

(d) any allowances in respect of any such trade under Chapter III of Part XIV of the Income Tax Act, 1967 , which under section 14 of the Corporation Tax Act, 1976 , were to be made in taxing the trade for the purposes of corporation tax for any accounting period in the specified period,

(e) any allowances in respect of any such trade under Part 9, section 670, Chapter 1 of Part 29 or subsection (1) or (2) of section 765, which under section 307 are to be made in taxing the trade for the purpose of corporation tax for any accounting period in the specified period,

(f) (i) any payments made by the company in the specified period to which section 237 or 238 applies, other than payments which are deductible in computing the profits or gains or losses of a trade carried on by the company,

(ii) any amount in respect of which repayment was made under section 496 of the Income Tax Act, 1967 , for any year of assessment in the specified period, and

(iii) any charges on income which under section 243 (2) are to be allowed as deductions against the total profits for any accounting period in the specified period,

(g) if the company is not engaged in carrying on a trade mentioned in section 752 (3) and has received in the period—

(i) on or before the 5th day of April, 1976, a dividend which if the company had been engaged in such a trade would have been required by section 371 (1) of the Income Tax Act, 1967 , to be taken into account to any extent mentioned in that section, such amount as would, after deduction of income tax at the rate authorised by section 456 of that Act, be equal to the amount which would have been so required to be taken into account,

(ii) after the 5th day of April, 1976, a distribution within the meaning of Chapter 2 of Part 6 which if the company had been engaged in such a trade would have been required by section 752 (3) to be taken into

account to any extent mentioned in that section, an amount equal to so much of the distribution as would be so required to be taken into account increased by so much of the tax credit in respect of that distribution as bears to the amount of such tax credit the same proportion as the part of the distribution which would be so required to be taken into account bears to the distribution, and

(h) if the company is not engaged in carrying on a trade mentioned in section 752 (3), but were it so engaged any reduction under section 749 would, or would but for section 749 (3), be made as respects the price paid by the company for securities (within the meaning of that section) bought by it in the period—

(i) on or before the 5th day of April, 1976, such amount as would, after deduction of income tax at the rate applicable to the payment, be equal to the amount of the reduction, or

(ii) after the 5th day of April, 1976, such amount as would be equal to an amount of gross interest corresponding to an amount of net interest equal to the amount of the reduction,

so however that where the securities are of the description specified in paragraph 4 of Schedule 21, the amount shall be the amount of the reduction,

and the balance shall be the income of the company for the specified period.

6. Any reference in paragraph 4 or 5 to an amount for a year of assessment in the period in question shall be taken as a reference to the full amount for any year of assessment falling wholly within that period and a proportionate part of the amount (on a time basis) for any year of assessment falling partly within that period, and the references in those paragraphs to an amount for an accounting period in that period shall be construed in a corresponding manner.