

Bill 6

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PART 1

TAX AVOIDANCE

CHAPTER 1

TRANSACTIONS IN SECURITIES

Introduction

1 Overview of Chapter [j6700]

- (1) This Chapter makes provision for counteracting corporation tax advantages obtained or obtainable by companies to which section 3 applies in respect of a transaction or transactions in securities.

Origin: ICTA s.703(1); drafting.

- (2) See section 18 (counteraction notices) for the way in which the corporation tax advantages may be counteracted.

Origin: Drafting.

2 Meaning of “corporation tax advantage” [j6700a]

- (1) In this Chapter “corporation tax advantage” means –
 - (a) a relief from corporation tax or increased relief from corporation tax,
 - (b) a repayment of corporation tax or increased repayment of corporation tax,
 - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or
 - (d) the avoidance of a possible assessment to corporation tax.

Origin: ICTA s.709(1).

- (2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected –
 - (a) by receipts accruing in such a way that the recipient does not pay or bear corporation tax on them, or
 - (b) by a deduction in calculating profits or gains.

Origin: ICTA s.709(1).

- (3) In this section “relief from corporation tax” includes a tax credit.

Origin: ICTA s.709(2A).

Company liable to counteraction of corporation tax advantages

3 Company liable to counteraction of corporation tax advantage [j6703]

- (1) This section applies to a company in respect of a transaction in securities or two or more such transactions if the company is in a position to obtain or has obtained a corporation tax advantage –
- (a) in circumstances where any of the provisions specified in subsection (2) applies in relation to the company, and
 - (b) in consequence of –
 - (i) the transaction, or
 - (ii) the combined effect of the transactions.

Origin: ICTA s.703(1).

- (2) The provisions are –
- section 5 (abnormal dividends used for exemptions or reliefs (circumstance A)),
 - section 6 (deductions from profits obtained following distribution or dealings (circumstance B)),
 - section 8 (receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)),
 - section 9 (receipt of consideration in connection with relevant company distribution (circumstance D)), and
 - section 10 (receipt of assets of relevant company (circumstance E)).

Origin: ICTA s.703(1).

- (3) For the purposes of this Chapter a corporation tax advantage is treated as obtained or obtainable by a company in consequence of –
- (a) a transaction in securities, or
 - (b) the combined effect of two or more such transactions,
- if it is obtained or obtainable by the company in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

Origin: ICTA s.703(2).

- (4) This section is subject to –
- section 4 (exception where no tax avoidance object shown),
 - section 16(3) (disapplication of this section where company receiving preliminary notification that this section may apply makes a statutory declaration and the relevant officer of Revenue and Customs sees no reason to take further action), and
 - section 17(5) (determination by tribunal that there is no prima facie case that this section applies).

Origin: Drafting.

4 Exception where no tax avoidance object shown [j6703f]

- (1) Section 3 does not apply to a company in respect of a transaction in securities or two or more such transactions if the company shows that the transaction or transactions meet conditions A and B.

Origin: ICTA s.703(1).

- (2) Condition A is that the transaction or transactions are effected –
- (a) for genuine commercial reasons, or
 - (b) in the ordinary course of making or managing investments.

Origin: ICTA s.703(1).

- (3) Condition B is that enabling corporation tax advantages to be obtained is not the main object or one of the main objects of the transaction or, as the case may be, any of the transactions.

Origin: ICTA s.703(1).

Circumstances in which corporation tax advantages obtained or obtainable

5 Abnormal dividends used for exemptions or reliefs (circumstance A) [j6704a]

- (1) This section applies in relation to a company if subsections (2) to (4) apply.

Origin: Drafting.

- (2) The company receives an abnormal amount by way of dividend (see section 12).

Origin: ICTA s.704-A.

- (3) The receipt is in connection with –
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
 - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
 - (c) the distribution, transfer or realisation of assets of a company, or
 - (d) the application of such assets in discharge of liabilities.

Origin: ICTA s.704-A, s.709(3).

- (4) The amount so received is taken into account for the purposes of –
- (a) any exemption from corporation tax,
 - (b) the setting-off of losses against profits or income, or
 - (c) the giving of group relief, or
 - (d) the application of franked investment income for the purposes of regulations made under section 32 of FA 1998 (unrelieved surplus advance corporation tax).

Origin: ICTA s.704-A.

6 Deductions from profits obtained following distribution or dealings (circumstance B) [j6704b]

- (1) This section applies in relation to a company if subsections (2) to (4) apply.

Origin: Drafting.

- (2) The company becomes entitled –
- (a) in respect of securities held or sold by the company, or
 - (b) in respect of securities formerly held by the company,
- to a deduction in calculating profits or gains.

Origin: ICTA s.704-B(1).

- (3) The entitlement arises in connection with—
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
 - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
 - (c) the distribution, transfer or realisation of assets of a company, or
 - (d) the application of such assets in discharge of liabilities.

Origin: ICTA s.704-B(1), s.709(3).

- (4) The entitlement arises because of a fall in the value of the securities resulting from—
- (a) the payment of a dividend on them, or
 - (b) any other dealing with any assets of a company.

Origin: ICTA s.704-B(1), s.709(3).

- (5) Subsection (2)(b) applies whether or not the company has sold the securities.

Origin: ICTA s.704-B(1).

7 Circumstance B deductions used for group relief [j6704ba]

- (1) This section applies if—
- (a) in the circumstances mentioned in section 6 a company becomes entitled to a deduction as mentioned in that section, and
 - (b) as a result of that deduction a corporation tax advantage is obtained or obtainable by another company by way of group relief.

Origin: ICTA s.704-B(2).

- (2) This Chapter applies in relation to that tax advantage as if it was obtained or obtainable by the other company in the circumstances mentioned in section 6.

Origin: ICTA s.704-B(2).

8 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C) [j6704c]

- (1) This section applies in relation to a company ("A") if subsections (2), (3) and (6) apply.

Origin: Drafting.

- (2) A receives consideration which—
- (a) is or represents the value of—
 - (i) assets which are available for distribution by a company by way of dividend, or
 - (ii) assets which would have been so available apart from anything done by the company,
 - (b) is received in respect of future receipts of a company, or
 - (c) is or represents the value of trading stock of a company.

Origin: ICTA s.704-C(1).

- (3) The receipt is in consequence of a transaction whereby another person (“B”) –
- (a) subsequently receives, or has received, an abnormal amount by way of dividend (see section 12), or
 - (b) subsequently becomes entitled, or has become entitled –
 - (i) in respect of securities held or sold by B, or
 - (ii) in respect of securities formerly held by B,to a deduction in calculating profits or gains, if the entitlement meets the conditions in subsections (4) and (5).

Origin: ICTA s.704-C(1), s.709(3).

- (4) The entitlement must arise in connection with –
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
 - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
 - (c) the distribution, transfer or realisation of assets of a company, or
 - (d) the application of such assets in discharge of liabilities.

Origin: ICTA s.704-B(1), s.704-C(1), s.709(3).

- (5) The entitlement must arise because of a fall in the value of the securities resulting from –
- (a) the payment of a dividend on them, or
 - (b) any other dealing with any assets of a company.

Origin: ICTA s.704-B(1), s.704-C(1).

- (6) The receipt of the consideration is such that A does not pay or bear corporation tax on it as income (apart from this Chapter).

Origin: ICTA s.704-C(1).

- (7) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.

Origin: ICTA s.704-C(2).

- (8) In this section references to the receipt of consideration include references to the receipt of any money or money’s worth.

Origin: ICTA s.709(3).

- (9) Subsection (3)(b)(ii) applies whether or not B has sold the securities.

Origin: ICTA s.704-B(1), s.704-C(1).

9 Receipt of consideration in connection with relevant company distribution (circumstance D) [j6704d]

- (1) This section applies in relation to a company (“the section 3 company”) if subsections (2) to (4) apply.

Origin: Drafting.

- (2) The section 3 company receives consideration in connection with—
- (a) the distribution, transfer or realisation of assets of a relevant company (see section 11), or
 - (b) the application of such assets in discharge of liabilities.

Origin: ICTA s.704-D(1)(part), s.709(3).

- (3) The consideration—
- (a) is or represents the value of—
 - (i) assets which are available for distribution by way of dividend by the relevant company, or
 - (ii) assets which would have been so available apart from anything done by the relevant company,
 - (b) is received in respect of future receipts of the relevant company, or
 - (c) is or represents the value of trading stock of the relevant company.

Origin: ICTA s.704-C(1), s.704-D(1).

- (4) The section 3 company so receives the consideration that it does not pay or bear corporation tax on it as income (apart from this Chapter).

Origin: ICTA s.704-C(1), s.704-D(1).

- (5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the relevant company is incorporated assets of that description are available for distribution by way of dividend.

Origin: ICTA s.704-C(2), s.704-D(1).

- (6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

Origin: ICTA s.709(3).

10 Receipt of assets of relevant company (circumstance E) [j6704e]

- (1) This section applies in relation to a company (“the section 3 company”) if subsections (2) to (4) and (7) apply.

Origin: Drafting.

- (2) The section 3 company receives consideration in connection with—
- (a) the direct or indirect transfer of assets of a relevant company (see section 11) to another such company, or
 - (b) any transaction in securities in which two or more relevant companies are concerned.

Origin: ICTA s.704-E(1).

- (3) The consideration is or represents the value of assets which—
- (a) are available for distribution by way of dividend by a relevant company,
 - (b) would have been so available apart from anything done by the relevant company, or
 - (c) are trading stock of a relevant company.

Origin: ICTA s.704-E(1), (3).

- (4) The consideration consists of any share capital or any security issued by a relevant company.

Origin: ICTA s.704-E(1).

- (5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).

Origin: ICTA s.704-E(2).

- (6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the relevant company.

Origin: ICTA s.704-E(3).

- (7) The section 3 company does not pay or bear corporation tax on the consideration as income (apart from this Chapter).

Origin: ICTA s.704-E(1), (3).

- (8) In this section—
- (a) references to the receipt of consideration include references to the receipt of any money or money's worth,
 - (b) “security” has the meaning given in [section 254(1) of ICTA (interpretation of Part 6 of ICTA: company distributions, tax credits etc)], and
 - (c) “share” includes stock and any other interest of a member in a company.

Origin: ICTA s.704-E(1), (3), s.709(3).

11 Meaning of “relevant company” in sections 9 and 10 [j6704f]

- (1) A company is a relevant company for the purposes of sections 9 and 10 if it is—
- (a) a company under the control of not more than 5 persons (but see subsection (2)), or
 - (b) any other company none of whose shares or stocks is—
 - (i) included in the official UK list, and
 - (ii) dealt in on a recognised stock exchange in the United Kingdom regularly or from time to time.

Origin: ICTA s.704-D(2).

- (2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.

Origin: ICTA s.704-D(2).

- (3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.

Origin: ICTA s.704-D(2).

- (4) In this section “control” has the meaning given by [section 416(2) to (6) of ICTA] (close companies: meaning of “associated company” and “control”).

Origin: ICTA s.704-D(3).

12 Abnormal dividends: general [j6709ad]

- (1) An amount received by way of dividend is treated as abnormal for the purposes of this Chapter if the appropriate authority is satisfied –
- (a) in any case that the excessive return condition is met (see section 13), or
 - (b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 14).

Origin: ICTA s.709(4).

- (2) In subsection (1) “the appropriate authority” means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Chapter –
- (a) an officer of Revenue and Customs,
 - (b) the Commissioners for Her Majesty’s Revenue and Customs,
 - (c) the Special Commissioners, or
 - (d) the tribunal appointed under section 23.

Origin: ICTA s.709(4); Annex 1, Change [jc601].

13 Abnormal dividends: the excessive return condition [j6709a]

- (1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.

Origin: ICTA s.709(4).

- (2) In this section “the relevant securities” means-
- (a) the securities in respect of which the dividend was received, and
 - (b) if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.

Origin: ICTA s.709(4).

- (3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had –
- (a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and
 - (b) to any dividends paid and other distributions made in respect of them during that time.

Origin: ICTA s.709(6).

- (4) If –
- (a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or
 - (b) no consideration was so provided,
- for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

Origin: ICTA s.709(6).

14 Abnormal dividends: the excessive accrual condition [j6709b]

- (1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—
 - (a) the dividend had accrued from day to day, and
 - (b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.

Origin: ICTA s.709(4).

- (2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—
 - (a) sell or otherwise dispose of any of the securities or any securities similar to them, or
 - (b) acquire an option to sell any of the securities or any securities similar to them.

Origin: ICTA s.709(4).

- (3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—
 - (a) to the same rights against the same persons as to capital and interest, and
 - (b) to the same remedies for the enforcement of those rights.

Origin: ICTA s.709(5).

- (4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.

Origin: ICTA s.709(5).

- (5) Subsection (3) applies despite any differences—
 - (a) in the total nominal amounts of the respective securities,
 - (b) in the form in which they are held, or
 - (c) in the manner in which they can be transferred.

Origin: ICTA s.709(5).

Procedure for counteraction of corporation tax advantages

15 Preliminary notification that section 3 may apply [j6703b]

- (1) An officer of Revenue and Customs must notify a company if the officer has reason to believe that—
 - (a) section 3 (company liable to counteraction of corporation tax advantage) may apply to the company in respect of a transaction or transactions, and
 - (b) a counteraction notice ought to be served on the company under section 18 about the transaction or transactions.

Origin: ICTA s.703(3), (9); Annex 1, Change [jc601].

- (2) The notification must specify the transaction or transactions.

Origin: ICTA s.703(9).

- (3) See section 18 for the serving of counteraction notices, and sections 16 and 17 for cases where the company on which the notice under this section is served disagrees that section 3 applies.

Origin: Drafting.

16 **Opposed notifications: statutory declarations [j6703bb]**

- (1) If a company on which a notification is served under section 15 is of the opinion that section 3 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions specified in the notification, the company may –

- (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
- (b) send it to the officer of Revenue and Customs.

Origin: ICTA s.703(9), (10); Annex 1, Change [jc601].

- (2) Such a declaration must be sent within 30 days of the issue of the notification.

Origin: ICTA s.703(9), (10).

- (3) If the company sends that declaration to the officer and the officer sees no reason to take further action –

- (a) section 3 does not so apply, and
- (b) accordingly no counteraction notice may be served on the company under section 18 about the transaction or transactions.

Origin: ICTA s.703(9), (10); Annex 1, Change [jc601].

17 **Opposed notifications: determinations by tribunal [j6703g]**

- (1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 16(1) sees reason to take further action about the transaction or transactions in question.

Origin: ICTA s.703(10); Annex 1, Change [jc601].

- (2) The officer must send the tribunal appointed under section 23 a certificate to that effect, together with the statutory declaration.

Origin: ICTA s.703(10).

- (3) The officer may also send the tribunal a counter-statement with the certificate.

Origin: ICTA s.703(10).

- (4) The tribunal must –

- (a) consider the declaration and certificate and any counter-statement, and
- (b) determine whether there is a prima facie case for the officer to take further action on the basis that section 3 (company liable to counteraction of corporation tax advantage) applies to the company by which the declaration was made in respect of the transaction or transactions in question.

Origin: ICTA s.703(10).

- (5) If the tribunal determines that there is no such case –
- (a) section 3 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the company under section 18 about the transaction or transactions.

Origin: ICTA s.703(10).

- (6) But such a determination does not affect the application of sections 3 and 18 in respect of transactions including not only the ones to which the determination relates but also others.

Origin: ICTA s.703(10).

18 Counteraction notices [j6703a]

- (1) If –
- (a) a company on which a notification is served under section 15 does not send a statutory declaration to an officer of Revenue and Customs under section 16 within 30 days of the issue of the notification, or
 - (b) the tribunal to which such a declaration is sent under section 17 determines that there is a prima facie case for serving a notice on a company under this section,

the corporation tax advantage in question is to be counteracted by adjustments.

Origin: ICTA s.703(3), (9), (10).

- (2) The adjustments required to be made to counteract the corporation tax advantage and the basis on which they are to be made are to be specified in a notice served on the company by an officer of Revenue and Customs.

Origin: ICTA s.703(3); Annex 1, Change [jc601].

- (3) In this Chapter such a notice is referred to as a “counteraction notice”.

Origin: Drafting.

- (4) Any of the following adjustments may be specified –
- (a) an assessment,
 - (b) the nullifying of a right to repayment,
 - (c) the requiring of the return of a repayment already made, or
 - (d) the calculation or recalculation of profits or gains or liability to corporation tax.

Origin: ICTA s.703(3).

- (5) Nothing in this section authorises the making of an assessment later than 6 years after the accounting period to which the corporation tax advantage relates.

Origin: ICTA s.703(12).

- (6) This section is subject to –
- section 19 (timing of assessments in section 10 cases), and
 - section 21(2) (effect of clearance notification under section 20).

Origin: Drafting.

- (7) But no other provision in the Corporation Tax Acts is to be read as limiting the powers conferred by this section.

Origin: ICTA s.703(12).

19 Timing of assessments in section 10 cases [j6703ac]

- (1) This section applies if section 3 (company liable to counteraction of corporation tax advantage) applies to a company because it is in a position to obtain or has obtained a corporation tax advantage by falling within the circumstances mentioned in section 10 (receipt of relevant company assets (circumstance E)) when share capital is repaid.

Origin: ICTA s.704-E(2).

- (2) An assessment to corporation tax made in accordance with a counteraction notice must be an assessment for the accounting period in which the repayment occurs.

Origin: ICTA s.704-E(2).

- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.

Origin: ICTA s.704-E(3).

- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

Origin: ICTA s.704-E(3).

Clearance procedure and information powers

20 Application for clearance of transactions [j6707]

- (1) A company may provide the Commissioners for Her Majesty’s Revenue and Customs with particulars of a transaction or transactions effected or to be effected by it in order to obtain a notification about them under this section.

Origin: ICTA s.707(1).

- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the company what further information they require for those purposes within 30 days of receiving the particulars or further information.

Origin: ICTA s.707(1).

- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.

Origin: ICTA s.707(1).

- (4) The Commissioners must notify the company whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.

Origin: ICTA s.707(1).

- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

Origin: ICTA s.707(1).

21 Effect of clearance notification under section 20 [j6707a]

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a company under section 20 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.

Origin: ICTA s.707(1).

- (2) No such notice may be served on the company in respect of the transaction or transactions.

Origin: ICTA s.707(1).

- (3) But the notification does not prevent such a notice being served on the company in respect of transactions including not only the ones to which the notification relates but also others.

Origin: ICTA s.707(3).

- (4) The notification is void if the particulars and any further information given under section 20 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

Origin: ICTA s.707(2).

22 Power to obtain information [j6708]

- (1) This section applies if it appears to an officer of Revenue and Customs that a company may be one to which section 3 (company liable to counteraction of corporation tax advantage) applies in respect of one or more transactions.

Origin: ICTA s.708; Annex 1, Change [jc601].

- (2) The officer may serve a notice on the company requiring it to give the officer information in its possession about the transaction or, if there are two or more, about any of them.

Origin: ICTA s.708; Annex 1, Change [jc601].

- (3) That information must be information about matters which are relevant to the question whether a counteraction notice should be served on the company.

Origin: ICTA s.708.

- (4) Those matters must be specified in the notice under subsection (2).

Origin: ICTA s.708.

- (5) That notice must require the information to be given within such period as is specified in it.

Origin: ICTA s.708.

- (6) That period must be at least 30 days.

Origin: ICTA s.708; Annex 1, Change [jc607].

The tribunal

23 The tribunal [j6706]

- (1) The tribunal for the purposes of this Chapter consists of –
- (a) a chairman appointed by the Lord Chancellor, and
 - (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

Origin: ICTA s.706(1).

- (2) A person appointed as chairman or other member of the tribunal must vacate the office on attaining the age of 70.

Origin: ICTA s.706(2).

- (3) But subsection (2) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (power to authorise continuance in office up to the age of 75).

Origin: ICTA s.706(1).

Appeals

24 Appeals against counteraction notices [j6705]

- (1) A company on which a counteraction notice has been served may appeal to the Special Commissioners on the grounds that –
- (a) section 3 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions in question, or
 - (b) the adjustments directed to be made are inappropriate.

Origin: ICTA s.705(1).

- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.

Origin: ICTA s.705(1).

- (3) On an appeal under this section the Special Commissioners may –
- (a) affirm, vary or cancel the counteraction notice, or
 - (b) affirm, vary or quash an assessment made in accordance with the notice.

Origin: ICTA s.705(5); drafting.

- (4) But the bringing of an appeal under this section (or a request for its rehearing under section 25) does not affect –

- (a) the validity of the counteraction notice, or
 - (b) the validity of any other thing done under or in accordance with section 18 (counteraction notices),
- pending the determination of the proceedings.

Origin: ICTA s.705(5).

25 Rehearing by tribunal of appeal against counteraction notice [j6705f]

- (1) The appellant or an officer of Revenue and Customs may, if dissatisfied with the determination of the Special Commissioners under section 24, require the appeal to be reheard by the tribunal appointed under section 23.

Origin: ICTA s.705(2); Annex 1, Change [jc601].

- (2) Such a request may be made only by giving notice to the Clerk to the Special Commissioners within 30 days after the determination.

Origin: ICTA s.705(2).

- (3) If such a request is made –
- (a) the Special Commissioners must transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal, and
 - (b) the tribunal must rehear and determine the appeal.

Origin: ICTA s.705(2), (3).

- (4) The tribunal has the same powers in relation to the appeal as the Special Commissioners.

Origin: ICTA s.705(3).

- (5) On the rehearing of an appeal under this section, the tribunal may –
- (a) affirm, vary or cancel the counteraction notice, or
 - (b) affirm, vary or quash an assessment made in accordance with the notice.

Origin: ICTA s.705(5).

- (6) The tribunal's determination is final and conclusive (but see sections 26 to 30).

Origin: ICTA s.705(3).

26 Statement of case by tribunal for opinion of High Court or Court of Session [j6705A]

- (1) This section applies if the appellant or an officer of Revenue and Customs ("the dissatisfied party") is dissatisfied with the tribunal's determination under section 25 on the rehearing of an appeal as being wrong in law.

Origin: ICTA s.705A(1); Annex 1, Change [jc601]; drafting.

- (2) The dissatisfied party may, within 30 days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court or in Scotland the Court of Session.

Origin: ICTA s.705A(2), (12); Annex 1, Change [jc611].

- (3) The dissatisfied party is entitled to have the case stated only on payment of a fee of £25 to the tribunal.

Origin: ICTA s.705A(3).

- (4) The case must set out the facts and the determination of the tribunal.

Origin: ICTA s.705A(4).

- (5) The dissatisfied party must –
- (a) within 30 days after receiving the stated and signed case, transmit it to the High Court or in Scotland the Court of Session, and
 - (b) not later than transmitting the case, send to the other party –
 - (i) notice in writing that the case has been stated on the dissatisfied party's application, and
 - (ii) a copy of the case.

Origin: ICTA s.705A(4), (5), (12).

- (6) The statement of a case under this section does not affect –
- (a) the validity of the counteraction notice, or
 - (b) the validity of any other thing done under or in accordance with section 18 (counteraction notices),
- pending the determination of the proceedings.

Origin: ICTA s.705(5).

- (7) In this section and sections 27 to 29 references to the Court of Session are references to the Court of Session sitting as the Court of Exchequer.

Origin: ICTA s.705A(12).

27 Cases before High Court or Court of Session [j6705Ab]

- (1) The High Court or in Scotland the Court of Session must hear and determine any question of law arising on a case transmitted to the Court under section 26(5).

Origin: ICTA s.705A(6), (12).

- (2) The Court may –
- (a) affirm, reverse or amend the determination in respect of which the case has been stated,
 - (b) remit the matter to the tribunal with the Court's opinion on it, or
 - (c) make such other order about the matter as it considers appropriate.

Origin: ICTA s.705A(6), (12).

- (3) The Court may send the case back for amendment.

Origin: ICTA s.705A(7).

- (4) A case sent back for amendment must be amended accordingly, and judgment must be delivered after it has been amended.

Origin: ICTA s.705A(7).

28 Effect of appeals against tribunal's determination under section 25 [j6705Ad]

- (1) This section applies if the tribunal has made a determination under section 25 about an assessment and a case –
 - (a) has been required to be stated about it under section 26(2), or
 - (b) is pending before the High Court or the Court of Session.

Origin: ICTA s.705A(10), (12).

- (2) Corporation tax must be paid in accordance with the determination except so far as subsection (3) or (4) applies.

Origin: ICTA s.705A(10).

- (3) If the amount charged is reduced by the order or judgment of the Court, the overpaid tax must be refunded with such interest, if any, as the Court may allow.

Origin: ICTA s.705A(11), (12).

- (4) If the amount charged is increased by the order or judgment, an officer of Revenue and Customs must issue the company assessed with a notice of the total amount payable in accordance with the order or judgment.

Origin: ICTA s.705A(11), (12).

- (5) The tax undercharged is due and payable at the end of the period of 30 days beginning with the date on which the notice is issued.

Origin: ICTA s.705A(11), (12).

29 Appeals from High Court or Court of Session [j6705Ac]

- (1) In the case of a decision under section 27 of the High Court, an appeal lies to the Court of Appeal and from there to the Supreme Court.

Origin: ICTA s.705A(8).

- (2) But that is subject to subsection (3) and to Part 2 of the Administration of Justice Act 1969 (c. 58) (appeal from High Court to Supreme Court).

Origin: ICTA s.705A(8).

- (3) No appeal lies to the Supreme Court from the Court of Appeal except with the leave of the Court of Appeal or the Supreme Court.

Origin: ICTA s.705A(9).

- (4) In the case of a decision under section 27 of the Court of Session, an appeal lies to the Supreme Court.

Origin: ICTA s.705A(12).

30 Proceedings in Northern Ireland [j6705B]

- (1) A case which is stated by the tribunal under section 26 (statement of case by tribunal for opinion of High Court or Court of Session) in proceedings in Northern Ireland is a case for the opinion of the Court of Appeal in Northern Ireland.

Origin: ICTA s.705B(1).

- (2) The Corporation Tax Acts and TMA 1970 have effect as if—
- (a) section 26 applied in relation to such proceedings with the omission of subsections (4) and (5), and
 - (b) that section and sections 27 and 28 applied in relation to such proceedings with the substitution of references to the Court of Appeal in Northern Ireland for references to the High Court.

Origin: ICTA s.705B(1).

- (3) The procedure relating to—
- (a) transmitting the case to the Court of Appeal in Northern Ireland, and
 - (b) the hearing and determination of the case by that Court,
- is that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction.

Origin: ICTA s.705B(2).

- (4) An appeal lies from the Court of Appeal in Northern Ireland to the Supreme Court in accordance with section 42 of the Judicature (Northern Ireland) Act 1978 (c. 23).

Origin: ICTA s.705B(2).

- (5) If in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under section 26 as applied by this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.

Origin: ICTA s.705B(3).

- (6) In this section “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to TMA 1970 is in Northern Ireland.

Origin: ICTA s.705B(4).

Interpretation

31 Interpretation of Chapter [j6709]

In this Chapter—

“company” includes any body corporate,

“dividends” includes references to other qualifying distributions and to interest,

“securities”—

(a) includes shares and stock, and

(b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,

“trading stock” has the meaning given by section [j035931] of [Bill 5], and

“transaction in securities” means transactions, of whatever description, relating to securities, and in particular—

(a) the purchase, sale or exchange of securities,

- (b) issuing or securing the issue of new securities,
- (c) applying or subscribing for new securities, and
- (d) altering or securing the alteration of the rights attached to securities.

Origin: ICTA s.709(2).