

EXPLANATORY NOTE

CLAUSE 34 SCHEDULE 14: CORPORATION TAX TREATMENT OF COMPANY DISTRIBUTIONS

AMENDMENTS 92-104

SUMMARY

1. Schedule 14 introduces a new Part 9A to the Corporation Tax Act 2009, which establishes the rules for distribution exemption. These amendments make relatively minor changes to Part 9A and to other parts of the Schedule to correct some minor drafting problems and to remedy a matter that might otherwise be exploited in tax avoidance schemes.

Amendments 92 + 93 + 99 + 101 + 102

2. The new Part 9A of CTA 2009 denies exemption for a distribution if a foreign tax deduction is given for the distribution or an amount representative of it. This is necessary to prevent avoidance risk – in particular, to prevent amounts that are in substance interest receipts being re-characterised as exempt distributions. The rule is contained in section 930B(c) for small companies and 930D(c) for other companies.
3. Manufactured dividends are, by their nature, representative of distributions and may qualify for foreign tax deductions in circumstances that should not cause exemption to be denied. The Schedule therefore makes an exception for manufactured dividends at paragraphs 11 and 12. However, tax deductions may also be given in respect of other types of financial instrument such as total return swaps, which are also representative of a distribution. It is therefore apparent that the exceptions in paragraphs 11 and 12 do not have sufficiently broad scope and need to be replaced by a more general reduction of the scope of the rule in sections 930B(c) and 930D(c). At the same time, the protection given against avoidance needs to be retained.
4. These amendments remove reference to amounts representative of a distribution from sections 930B(c) and 930D(c) and places it instead in a new anti-avoidance rule, thereby limiting the scope of its application only to avoidance arrangements. This enables simplification of the manufactured dividend rules, which no longer require a specific exception.
5. Amendment 92 reduces the scope of the general restriction on exemption in section 930B(c) for distributions received by small companies. The restriction remains for distributions that give rise to

foreign tax deductions, but the extension that applies to “amounts determined by reference to” the distribution is removed. This extended meaning is moved to an anti-avoidance rule that is introduced by amendment 96 below.

6. Amendment 93 has exactly the same effect as amendment 92, but applies to companies other than small companies.
7. Amendment 99 introduces a new anti-avoidance rule, which applies where there is a tax advantage scheme (see section 930U) whereby a foreign tax deduction is given for an amount representative of a distribution. This rule replaces the generally applicable restriction on exemption that is removed by amendments 92 and 93. The restriction now applies only where there is a tax advantage scheme.
8. Amendment 101 removes the specific exclusion from the restrictions in 930B(c) and 930D(c) for manufactured UK dividends. This exclusion is no longer needed now that the general restriction is removed.
9. Amendment 102 does exactly the same as amendment 101, but with effect for manufactured overseas dividends.

Amendments 94 + 95 + 96 + 97 + 98 + 103 + 104

10. This group of seven amendments corrects mainly relatively minor drafting problems caused by inconsistent use of the word “otherwise” throughout Schedule 14. In particular, the amendment reduces the scope of an anti-avoidance rule introduced as section 930M of the Corporation Tax Act, which manages risks arising from the overlap of distribution exemption with the disguised interest rules in clause 48 and Schedule 24.
11. Amendments 94, 96, 103 and 104 replace the phrase “apart from” used at various points throughout Schedule 14 with the phrase “otherwise than by virtue of”. This revision improves the clarity of the drafting because it is consistent with references to a dividend being exempt “by virtue of” a provision (see for example section 930J(1)) and also because it allows the “apart from” formulation to be reserved for use in the anti-avoidance provisions (see for example section 930J(1) again).
12. Amendments 95 and 97 make minor changes consequential to amendments 94 and 96.
13. Amendment 98 makes it clear that section 930M, which is an anti-avoidance rule, cannot apply in any case where exemption is given under the section 930E exempt class (controlled companies). As drafted it was arguable that the rule might potentially apply in a case where a distribution is exempt both under section 930E and also

under one of the other exempt classes. This amendment makes it clear that it cannot.

Amendment 100

14. This amendment ensures consistency between the double taxation relief (DTR) rules and the distribution exemption rules in Part 9A CTA 2009 in cases where a dividend is taxable because it is paid out of profits that are designed to achieve a reduction in UK tax. As drafted there is no necessary consistency between the two sets of rules and there is a risk that this inconsistency might be exploited by tax avoidance schemes, whereby a dividend that is in principle taxable because it is associated with tax avoidance would not be effectively taxed because DTR might be inappropriately attributed to it.
15. The amendment applies to section 930H, which gives exemption to any dividend not paid out of profits resulting from transactions that have as a main purpose to reduce UK tax. The DTR rules give tax credit for foreign tax paid on the profits out of which a dividend is paid, but allow a degree of choice about the way profits are specified for this purpose.
16. The amendment requires that DTR is calculated by reference to the same profits as are taken into account in section 930H. This ensures that DTR is given in an amount that is appropriate to the profits being distributed by the dividend.

Mr Stephen Timms	92
Schedule 14, page 134, line 1, leave out ‘any amount determined by reference to’.	
Mr Stephen Timms	93
Schedule 14, page 135, line 17, leave out ‘any amount determined by reference to’.	
Mr Stephen Timms	94
Schedule 14, page 136, line 30, leave out ‘apart from’ and insert ‘otherwise than by virtue of’.	
Mr Stephen Timms	95
Schedule 14, page 136, line 33, leave out from beginning to ‘is’ in line 34 and insert ‘Any other dividend’.	
Mr Stephen Timms	96
Schedule 14, page 137, line 14, leave out ‘apart from’ and insert ‘otherwise than by virtue of’.	
Mr Stephen Timms	97
Schedule 14, page 137, line 17, leave out from beginning to ‘is’ in line 18 and insert ‘Any other dividend’.	
Mr Stephen Timms	98
Schedule 14, page 138, line 18, leave out from ‘that’ to end of line 20 and insert ‘does not fall into an exempt class by virtue of section 930E but would, apart from this section, fall into an exempt class otherwise than by virtue of that section.’.	
Mr Stephen Timms	99
Schedule 14, page 138, line 46, at end insert-	
‘930MA Schemes involving distributions for which deductions are given	
(1) This section applies to a dividend or other distribution that would, apart from this section, fall into an exempt class.	
(2) The distribution does not fall into an exempt class if-	
(a) the distribution is made as part of a tax advantage scheme, and	
(b) the following condition is met.	
(3) The condition is that a deduction is allowed to a resident of any territory outside the United Kingdom under the law of that territory in respect of an amount determined by reference to the distribution.’.	

Mr Stephen Timms

100

Schedule 14, page 143, line 9, leave out sub-paragraphs (2) and (3) and insert-

- (i) In subsection (3) (as it has effect as amended by paragraph 8 of Schedule 30 to FA 2000)-
 - (a) before paragraph (a), insert-
 - “(za) if the dividend is received in an accounting period of the recipient in which the recipient is not a small company, and the dividend is a relevant dividend, the profits in respect of which the dividend is paid;”,
 - (b) in paragraph (a), at the beginning, insert “in a case not falling under paragraph (za),”, and
 - (c) in paragraph (c), at the beginning, insert “in a case not falling under paragraph (za),”.
- (j) After subsection (3) insert-
 - “(3A) For the purposes of subsection (3)-
 - (a) “small company” has the same meaning as in Part 9A of CTA 2009 (company distributions),
 - (b) ‘relevant dividend’ means a dividend that, for the purposes of section 930H of that Act (dividends derived from transactions not designed to reduce tax), is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section), and
 - (c) the profits in respect of which a dividend is paid are the profits in respect of which the dividend is treated as paid for the purposes of that section.”.

Mr Stephen Timms

101

Schedule 14, page 144, line 24, leave out from beginning to ‘modification’ in line 32 and insert ‘modification.

(3B) The’.

Mr Stephen Timms

102

Schedule 14, page 145, line 36, leave out from ‘following’ to ‘modification’ in line 44 and insert ‘modification.

(4B) The’.

Mr Stephen Timms

103

Schedule 14, page 148, line 28, leave out ‘apart from’ and insert ‘otherwise than by virtue of’.

Mr Stephen Timms

104

Schedule 14, page 148, line 37, leave out ‘apart from’ and insert ‘otherwise than by virtue of’.