



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 23

#### COMPANY DISTRIBUTIONS

### CHAPTER 2

#### MATTERS WHICH ARE DISTRIBUTIONS

#### *Exceptions to section 1008*

#### **1009 Securities reflecting dividends on certain shares etc: exclusion of section 1008**

- (1) Section 1008 does not apply in relation to a security issued by a company (“the issuing company”) if—
- (a) the security reflects to a significant extent dividends or other distributions in respect of, or fluctuations in the value of, shares, and
  - (b) those shares are in one or more companies each of which is the issuing company or an associated company of the issuing company.
- (2) Subsection (1) does not prevent section 1008 from applying in relation to a security if—
- (a) the issuing company is a bank or securities house,
  - (b) the issuing company issues the security in the ordinary course of its business, and
  - (c) the security reflects dividends or other distributions in respect of the shares mentioned in subsection (1), or fluctuations in the value of those shares, only because it reflects fluctuations in a qualifying index.
- (3) In this section—
- “bank” has the meaning given by section 1120, and
  - “securities house” means a person—

---

*Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: Exceptions to section 1008. (See end of Document for details)*

---

- (a) who is authorised for the purposes of FISMA 2000, and
- (b) whose business consists wholly or mainly of dealing as principal in financial instruments within the meaning of section 984 of ITA 2007.

#### **1010 Meaning of “qualifying index” in section 1009**

- (1) In section 1009 “qualifying index” means an index which meets the conditions in subsections (2) and (3).
- (2) The underlying subject matter of the index must include both—
  - (a) shares that meet the description in section 1009(1)(b), and
  - (b) shares that do not meet that description.
- (3) Shares that do not meet the description in section 1009(1)(b) must represent a significant proportion of the market value of the underlying subject matter of the index.

#### **1011 Meaning of “associated company” in section 1009**

- (1) For the purposes of section 1009 a company is an “associated company” of another at any time when—
  - (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) For the purposes of subsection (1) a person controls a company if the person has power to secure that the affairs of the company are conducted in accordance with the person's wishes, and has that power—
  - (a) by holding shares in the company or any other company,
  - (b) by possessing voting power in relation to the company or any other company, or
  - (c) by virtue of any powers conferred by—
    - (i) the articles of association of the company or any other company, or
    - (ii) any other document regulating the company or any other company.
- (3) Shares held by a company, and any voting power or other powers arising from the shares, must be ignored for the purposes of subsection (2) if—
  - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
  - (b) the shares are not assets of an insurance company's long-term insurance fund.

#### **1012 Hedging arrangements**

- (1) Section 1008 does not at a given time apply in relation to a security issued by a company (“the issuing company”) if—
  - (a) at that time, or
  - (b) at any earlier time after 16 April 2002,
 there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.

This is subject to section 1013.

- (2) If, as a result of this section, section 1008 stops applying at any time in relation to a security, paragraph E in paragraph 1000(1) has effect in relation to the security from

---

*Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: Exceptions to section 1008. (See end of Document for details)*

---

that time as it would have had effect if section 1008 had never applied in relation to the security.

### **1013 Exception to section 1012**

- (1) Section 1012 does not prevent section 1008 from applying in relation to a security at a given time if—
  - (a) each of conditions A to D is met in relation to any hedging arrangements existing at that time that relate to some or all of the company's liabilities under the security, and
  - (b) at all earlier times after 16 April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, each of conditions A to D was met in relation to those arrangements.
- (2) Condition A is that the hedging arrangements do not constitute, include or form part of any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax.
- (3) In subsection (2) “tax” includes stamp duty and stamp duty land tax.
- (4) Condition B is that the hedging arrangements are such that any amounts intended under the arrangements to offset some or all of a corporation tax deduction in respect of the security—
  - (a) arise at the time when the deduction falls to be made, or within a reasonable time before or after that time, and
  - (b) arise—
    - (i) to the issuing company, or
    - (ii) to a company which is a member of the same group of companies as the issuing company.
- (5) In subsection (4) “corporation tax deduction” means a deduction that falls to be made for corporation tax purposes by the issuing company at any time.
- (6) Condition C is that the whole of every amount arising as mentioned in subsection (4) is brought into charge to corporation tax—
  - (a) by a company falling within subsection (4)(b)(i) or (ii), or
  - (b) by two or more companies (taken together) each of which falls within subsection (4)(b)(i) or (ii).
- (7) Condition D is that for corporation tax purposes any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable in proportion to the amounts required to be brought into charge to corporation tax by subsection (6).
- (8) For the purposes of this section two companies are members of the same group of companies if they are members of the same group of companies for the purposes of Part 5 (see section 152).

### **1014 Meaning of “hedging arrangements”**

- (1) This section explains what “hedging arrangements” means, in relation to a security, in sections 1012 and 1013.
- (2) “Hedging arrangements” means any scheme or arrangement for the purpose of securing that an offsetting amount of income or gain—

---

**Changes to legislation:** There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross Heading: Exceptions to section 1008. (See end of Document for details)

---

- (a) accrues, or
  - (b) is received or receivable.
- (3) In subsection (2) “offsetting amount” means an amount which is intended to offset some or all of the amounts that fall to be brought into account in respect of amounts accruing or falling to be paid in accordance with the terms of the security.
- (4) It does not matter whether the purpose mentioned in subsection (2) is the only purpose, or just one of the purposes, of the scheme or arrangement.
- (5) It does not matter whether the purpose mentioned in subsection (2) is to secure that the offsetting amount accrues, or is received or receivable, directly or indirectly.
- (6) In this section “brought into account” means brought into account in accordance with generally accepted accounting practice.

**Changes to legislation:**

There are currently no known outstanding effects for the Corporation Tax Act 2010, Cross  
Heading: Exceptions to section 1008.