



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 23

#### COMPANY DISTRIBUTIONS

### CHAPTER 1

#### INTRODUCTION

#### **997 Overview of Part**

- (1) Chapters 2 to 5 contain provision about what is, and what is not, a distribution.
- (2) Chapter 5 (demergers) includes provision that charges income tax, or applies the charge to corporation tax on income, in relation to certain payments.
- (3) Chapters 2 to 5 also include—
  - (a) provision about the persons to whom certain distributions are treated as made (see sections 1020(2) and 1064(2)),
  - (b) provision about how the amount of certain distributions is determined (see sections 1003, 1004, 1020(2) and 1064(2)),
  - (c) other special rules about distributions made by certain companies (see Chapter 4), and
  - (d) provision about returns and information (see sections 1046, 1052, 1053 and 1095 to 1097).
- (4) Chapter 6 contains provision of more general application about returns and information relating to distributions.
- (5) Chapter 7 contains provision about tax credits.
- (6) Chapter 8 contains definitions and other provision about the interpretation of this Part.

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- (7) Section 152(3)(b) of FA 1995 enables regulations under that section to include provision which modifies the following in relation to open-ended investment companies, or payments falling to be treated as the distributions of such companies—
- (a) Chapter 2 (except section 1000(2)),
  - (b) sections 1030 to 1048 and section 1049(1) and (3),
  - (c) sections 1059 to 1063,
  - (d) Chapter 5.

## CHAPTER 2

### MATTERS WHICH ARE DISTRIBUTIONS

#### *Introduction*

#### **998 Overview of Chapter**

- (1) Sections 1000 to 1023 are about the meaning of “distribution” in the Corporation Tax Acts.
- (2) In particular, section 1000(1) lists the matters which are distributions.
- (3) Sections 1002 to 1023 contain provisions supplementing the paragraphs of that list.
- (4) The table in section 1001 mentions some of the main provisions which explain, supplement or limit particular paragraphs of the list in section 1000(1).
- (5) Sections 1024 to 1028 are about the meaning of “repayment of share capital”.

#### **999 Priority of negative rules**

- (1) The provisions of this Chapter are subject to any express exceptions.
- (2) See, in particular—
  - (a) Chapter 3 (matters which are not distributions),
  - (b) section 1075 (exempt distributions), and
  - (c) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society’s business to a company: qualifying benefits),
 and see also the table in section 1001.

#### *Meaning of “distribution”*

#### **1000 Meaning of “distribution”**

- (1) In the Corporation Tax Acts “distribution”, in relation to any company, means anything falling within any of the following paragraphs.
  - A. Any dividend paid by the company, including a capital dividend.
  - B. Any other distribution out of assets of the company in respect of shares in the company, except however much (if any) of the distribution—
    - (a) represents repayment of capital on the shares, or

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(b) is (when it is made) equal in amount or value to any new consideration received by the company for the distribution.

For the purposes of this paragraph it does not matter whether the distribution is in cash or not.

- C. Any redeemable share capital issued by the company—
  - (a) in respect of shares in, or securities of, the company, and
  - (b) otherwise than for new consideration (see sections 1003 and 1115).
- D. Any security issued by the company—
  - (a) in respect of shares in, or securities of, the company, and
  - (b) otherwise than for new consideration (see sections 1004 and 1115).
- E. Any interest or other distribution out of assets of the company in respect of securities of the company which are non-commercial securities (as defined in section 1005), except—
  - (a) however much (if any) of the distribution represents the principal secured by the securities, and
  - (b) however much (if any) of the distribution represents a reasonable commercial return for the use of the principal.
- F. Any interest or other distribution out of assets of the company in respect of securities of the company which are special securities (as defined in section 1015), except—
  - (a) however much (if any) of the distribution represents the principal secured by the securities, and
  - (b) however much (if any) of the distribution falls within paragraph E.
- G. Any amount treated as a distribution by section 1020 (transfers of assets or liabilities).
- H. Any amount treated as a distribution by section 1022 (bonus issues following repayment of share capital).

(2) In the Corporation Tax Acts “distribution”, in relation to a close company, also includes anything treated as a distribution by section 1064 (certain expenses of close companies treated as distributions).

(3) See also section 1072 (which extends the meaning of “distribution” in relation to members of a 90% group).

### **1001 Provisions related to paragraphs A to H in section 1000(1)**

The following table mentions, for each paragraph in section 1000(1)—

- (a) some of the main provisions that explain or supplement it, and
- (b) some of the main provisions that limit it.

<i>Paragraph in section 1000(1)</i>	<i>Explained or supplemented by</i>	<i>Limited by</i>
A (dividends).		Section 1054 (building society payments).  Sections 1055(2) and 1057(2) (dividend paid by industrial and provident

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<i>Paragraph in section 1000(1)</i>	<i>Explained or supplemented by</i>	<i>Limited by</i>
B (other distributions in respect of shares).	Sections 1024 to 1028 (meaning of “repayment of share capital”). Section 1113(1) (extends meaning of “in respect of shares in the company”).	society or UK agricultural or fishing co-operative). Section 1002 (exception for certain transfers of assets and liabilities).
C (redeemable share capital).	Section 1003 (redeemable share capital). Section 1113(1). Section 1114(1) (extends meaning of “in respect of securities of the company”).	Section 1049(3)(a) (stock dividends).
D (securities issued otherwise than for new consideration).	Section 1004 (securities issued otherwise than for new consideration). Section 1113(1). Section 1114(1).	
E (distributions in respect of non-commercial securities).	Sections 1005 to 1014 (meaning of “non-commercial securities” etc). Section 1114(1).	
F (distributions in respect of special securities).	Sections 1015 to 1018 (meaning of “special securities” etc). Section 1114(1).	Section 1019 (relevant alternative finance return). Section 1032 (interest etc paid in respect of certain securities).
G (transfers of assets or liabilities).	Section 1020 (transfers of assets or liabilities treated as distributions).	
H (bonus issues following repayment of share capital).	Sections 1022 and 1023 (bonus issues following repayment of share capital treated as distributions).	Section 1049(3)(b)(i) (stock dividends).

*Distributions, other than dividends, in respect of shares*

**1002 Exceptions for certain transfers of assets or liabilities between a company and its members**

- (1) No transfer of assets (other than cash) or of liabilities between one company and another constitutes, or is treated as giving rise to, a distribution by virtue of paragraph B in section 1000(1) if—
  - (a) both the companies are UK resident,
  - (b) neither of them is a 51% subsidiary of a non-UK resident company, and
  - (c) the two companies are not under common control, either at the time of the transfer or as a result of it.
- (2) Subsection (3) applies if—
  - (a) on a transfer of assets or liabilities by a company to its members, or to a company by its members, a member receives a benefit,
  - (b) the conditions in section 1021(1)(a) and (b) are met, and
  - (c) if those conditions were not met, an amount would be a distribution under section 1020(2) (transfers of assets or liabilities treated as distributions).
- (3) The amount mentioned in subsection (2)(c) is not a distribution by virtue of paragraph B in section 1000(1).
- (4) In this section—

“under common control” means under the control of the same person or persons, and

“control” has the same meaning as in Part 10 (see sections 450 and 451).

*Redeemable share capital*

**1003 Redeemable share capital**

- (1) Subsection (2) applies if—
  - (a) a company issues redeemable share capital, and
  - (b) the issue is partly (but not wholly) for new consideration.
- (2) The part (if any) of the share capital that is properly referable to the new consideration does not fall within paragraph C in section 1000(1).
- (3) In determining, for the purposes of paragraph C in section 1000(1), the amount of the distribution constituted by the issue of any redeemable share capital, the value of the share capital is taken to be the sum of—
  - (a) the amount of the share capital, and
  - (b) the amount of any premium payable on redemption, in a winding up, or in any other circumstances.

*Securities issued otherwise than for new consideration*

**1004 Securities issued otherwise than for new consideration**

- (1) Subsection (2) applies if—

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- (a) a company issues a security, and
  - (b) the issue is partly (but not wholly) for new consideration.
- (2) The part (if any) of the security that is properly referable to the new consideration does not fall within paragraph D in section 1000(1).
- (3) In determining, for the purposes of paragraph D in section 1000(1), the amount of the distribution constituted by the issue of any security, the value of the security is taken to be the amount of the principal secured, including any premium payable—
- (a) at maturity,
  - (b) in a winding up, or
  - (c) in any other circumstances.

*Distributions in respect of non-commercial securities*

**1005 Meaning of “non-commercial securities”**

For the purposes of paragraph E in section 1000(1) securities of a company are non-commercial securities if the consideration given by the company under the securities for the use of the principal secured by them represents more than a reasonable commercial return for the use of that principal.

**1006 Distributions exceeding consideration received for issue of security**

No amount is to be regarded for the purposes of paragraph E in section 1000(1) as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

**1007 Securities issued at premium representing new consideration**

- (1) This section applies if any security of a company is issued at a premium representing new consideration (but see also section 1008).
- (2) In relation to a distribution in respect of the security, the reference in paragraph E in section 1000(1) to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of—
- (a) however much of the distribution represents the principal, and
  - (b) however much of it represents the premium.
- (3) In relation to a distribution in respect of the security, the reference in paragraph E in section 1000(1) to however much of the distribution represents a reasonable commercial return for the use of the principal secured by the security is to be read as a reference to the sum of—
- (a) however much of the distribution represents a reasonable commercial return for the use of the principal, and
  - (b) however much of it represents (when regard is had to the extent to which distributions represent the premium) a reasonable commercial return for the use of the premium.

### **1008 Consideration for issue of security exceeding amount of principal**

- (1) This section applies if—
  - (a) a company issues a security, and
  - (b) the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security.
- (2) The amount of the principal is treated for the purposes of paragraph E in section 1000(1) as increased to the amount of that new consideration.
- (3) Section 1007 does not have effect in relation to the security.
- (4) This section is subject to sections 1009 and 1012.

#### *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—
    - (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.

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### **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 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—
  - (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.

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- (6) In this section “brought into account” means brought into account in accordance with generally accepted accounting practice.

*Distributions in respect of special securities*

**1015 Meaning of “special securities”**

- (1) Securities of a company are special securities for the purposes of paragraph F in section 1000(1) if they meet any of conditions A to E.
- (2) Condition A is that the securities are issued as described in paragraph D in section 1000(1) (securities issued otherwise than for new consideration).
- (3) Condition B is that—
- (a) the securities—
    - (i) are convertible (directly or indirectly) into shares in the company, or
    - (ii) carry a right to receive shares in or securities of the company, and
  - (b) the securities are neither listed on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.
- (4) Condition C is that under the securities the consideration given by the company for the use of the principal secured depends (to any extent) on the results of—
- (a) the company’s business, or
  - (b) any part of the company’s business.
- (5) Condition D is that the securities are connected with shares in the company (see section 1017(2)).
- (6) Condition E is that the securities are equity notes—
- (a) issued by the company (“the issuing company”), and
  - (b) held by a company which—
    - (i) is associated with the issuing company, or
    - (ii) is a funded company (see section 1017(3)).

**1016 Meaning of “equity note” in section 1015**

- (1) For the purposes of section 1015(6) a security is an equity note if any of the tests in subsection (2) is satisfied either—
- (a) as regards the whole of the principal, or
  - (b) as regards any part of it.

- (2) These are the tests.

*Test 1*

The security’s terms contain no particular date by which it is to be redeemed.

*Test 2*

Under the security’s terms the date for redemption, or the latest date for redemption, falls after the end of the permitted period.

*Test 3*

Under the security's terms redemption is to occur after the end of the permitted period if a particular event occurs, and the event is one which (judged at the time of the security's issue) is certain or likely to occur.

*Test 4*

The issuing company can secure—

- (a) that there is no particular date by which the security is to be redeemed, or
- (b) that the date for redemption falls after the end of the permitted period.

- (3) In subsection (2) “the permitted period” means the period of 50 years beginning with the date of the security's issue.

### **1017 Section 1015: other interpretation**

- (1) For the purposes of section 1015(4) the consideration given by the company for the use of the principal secured is not treated as depending on the results of the company's business (or any part of it) merely because the terms of the security provide—
- (a) for the consideration to be reduced if the results improve, or
  - (b) for the consideration to be increased if the results deteriorate.
- (2) For the purposes of section 1015(5) securities are connected with shares in the company if—
- (a) it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or acquire, a proportionate holding of the shares, and
  - (b) that is a consequence of the nature of the rights attaching to the securities or shares and, in particular, any terms or conditions attaching to the right to transfer the securities or shares.
- (3) For the purposes of section 1015(6) a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by—
- (a) the issuing company, or
  - (b) a company associated with the issuing company.
- (4) For the purposes of subsection (3) above and section 1015(6), a company is associated with the issuing company if—
- (a) the issuing company is a 75% subsidiary of the other company,
  - (b) the other company is a 75% subsidiary of the issuing company, or
  - (c) both are 75% subsidiaries of a third company.

### **1018 The principal secured: special securities**

- (1) No amount is to be regarded for the purposes of paragraph F in section 1000(1) as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

This is without prejudice to section 1117(6).

- (2) Subsection (3) applies if—
- (a) a security of a company is issued at a premium representing new consideration, and
  - (b) there is a distribution in respect of the security.

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- (3) The reference in paragraph F in section 1000(1) to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of—
- (a) however much of the distribution represents the principal, and
  - (b) however much of it represents the premium.

### **1019 Relevant alternative finance return**

- (1) Relevant alternative finance return is not treated by virtue of section 1015(4) as being a distribution for the purposes of the Corporation Tax Acts.
- (2) For corporation tax purposes “relevant alternative finance return” in subsection (1) means—
- (a) anything that is alternative finance return for the purposes of Part 6 of CTA 2009 as a result of section 513 of that Act, or
  - (b) any part of the redemption payment under arrangements to which section 507 of CTA 2009 (investment bond arrangements) applies.
- (3) For income tax purposes “relevant alternative finance return” in subsection (1) means—
- (a) anything that is alternative finance return for the purposes of Part 10A of ITA 2007 as a result of section 564L of that Act, or
  - (b) any part of the redemption payment under arrangements to which section 564G of ITA 2007 (investment bond arrangements) applies.

#### *Transfers of assets or liabilities treated as distributions*

### **1020 Transfers of assets or liabilities treated as distributions**

- (1) This section applies if on a transfer of assets or liabilities—
- (a) by a company to its members, or
  - (b) to a company by its members,
- the amount or value of the benefit received by a member exceeds the amount or value of any new consideration given by the member.
- (2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the member of an amount equal to the excess.
- But this is subject to section 1021.
- (3) For the purposes of subsection (1) the amount or value of a benefit, or of any consideration, is determined in accordance with the market value.

### **1021 Section 1020: exceptions**

- (1) Section 1020 does not apply if—
- (a) the company and the member receiving the benefit are both UK resident, and
  - (b) either—
    - (i) the company is a 51% subsidiary of the member, or
    - (ii) both are 51% subsidiaries of a third company which is also UK resident.

- (2) In determining whether one body corporate is a 51% subsidiary of another body corporate (“A”) for the purposes of subsection (1), A is treated as not being the owner of—
- (a) any share capital which it owns directly in a body corporate as trading stock,
  - (b) any share capital which it owns indirectly, and which is owned directly by a body corporate as trading stock, or
  - (c) any share capital which it owns directly or indirectly in a body corporate which is not UK resident.
- (3) For the purposes of subsection (2) share capital owned by a body corporate is owned as trading stock if (and only if) a profit on the sale of the shares would be treated as a trading receipt of the body’s trade.
- (4) No transfer of assets (other than cash) or of liabilities between one company and another constitutes, or is treated as giving rise to, a distribution by virtue of section 1020 if—
- (a) both the companies are UK resident,
  - (b) neither of them is a 51% subsidiary of a non-UK resident company, and
  - (c) they are not under common control, either at the time of the transfer or as a result of it.
- (5) In this section—
- “under common control” means under the control of the same person or persons, and
  - “control” has the same meaning as in Part 10 (see sections 450 and 451).

*Bonus issue following repayment of share capital*

**1022 Bonus issue following repayment of share capital treated as distribution**

- (1) Subsection (3) applies if a company—
- (a) repays or has repaid any share capital, and
  - (b) at or after the time of the repayment issues any share capital as paid up otherwise than by the receipt of new consideration.
- (2) But subsection (3) does not apply so far as any provision of the Corporation Tax Acts makes contrary provision.
- (3) The amount paid up as mentioned in subsection (1)(b) is treated for the purposes of the Corporation Tax Acts as a distribution made in respect of the shares on which it is paid up, except so far as that amount exceeds the adjusted amount of the repaid share capital.
- (4) The reference in subsection (3) to the adjusted amount of the repaid share capital is to—
- (a) the amount, or total amount, of share capital repaid as mentioned in subsection (1)(a), minus
  - (b) any amounts previously paid up as mentioned in subsection (1)(b) and treated as distributions by virtue of subsection (3).

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### **1023 Exceptions to section 1022(3)**

- (1) Section 1022(3) does not apply if the issue of share capital mentioned in section 1022(1)(b)—
- (a) takes place more than 10 years after the repayment of share capital mentioned in subsection 1022(1)(a), and
  - (b) is not of redeemable share capital.
- (2) But subsection (1) does not prevent section 1022(3) from applying in the case of a company which is a relevant company for the purposes mentioned in section 739 (certain companies not included in the official UK list etc).
- (3) Section 1022(3) does not apply if the repaid share capital consists of fully paid preference shares and—
- (a) those shares were issued as fully paid preference shares,
  - (b) they were issued wholly for new consideration not derived from ordinary shares, and
  - (c) throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.
- (4) For the purposes of subsection (3) consideration is derived from ordinary shares if (and only if)—
- (a) it consists of the surrender, transfer or cancellation of ordinary shares,
  - (b) it consists of the variation of rights in ordinary shares, or
  - (c) it is derived from a repayment of share capital paid in respect of ordinary shares,
- and for the purposes of this subsection it does not matter whether the ordinary shares are of the company or another company.
- (5) In this section—
- “ordinary shares” means shares other than preference shares, and
- “preference shares” means shares which—
- (a) do not carry any right to dividends other than dividends at a fixed rate per cent of the nominal value of the shares, and
  - (b) carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares included in the official UK list.

#### *Interpretation of references to repayment of share capital*

### **1024 Premiums paid on redemption of share capital**

Premiums paid on redemption of share capital are not treated as repayments of share capital for the purposes of this Chapter.

### **1025 Share capital issued at a premium representing new consideration**

- (1) This section applies if—
- (a) share capital is issued at a premium representing new consideration, and
  - (b) a distribution is made in respect of shares representing the share capital.

- (2) The amount of the premium is treated as forming part of the share capital for the purpose of determining under this Chapter whether the distribution is a repayment of share capital.
- (3) Subsection (2) does not have effect in relation to any part of the premium after that part has been applied to paying up share capital.

### **1026 Distributions following a bonus issue**

- (1) This section applies if—
  - (a) a company issues, or has issued, any share capital (“the bonus share capital”) as paid up otherwise than by the receipt of new consideration, and
  - (b) an amount paid up as mentioned in paragraph (a) does not fall to be treated as a qualifying distribution.
- (2) Distributions made afterwards by the company in respect of shares representing the bonus share capital are not treated as repayments of share capital for the purposes of this Chapter.

But this is subject to section 1027 and any other contrary provision in the Corporation Tax Acts.
- (3) Except where the company is a relevant company for the purposes mentioned in section 739 (certain companies not included in the official UK list etc), subsection (2) does not prevent a distribution being treated as a repayment of share capital if it is made—
  - (a) more than 10 years after the issue of the share capital mentioned in subsection (1)(a), and
  - (b) in respect of share capital other than redeemable share capital.
- (4) For the purposes of this section and section 1027—
  - (a) all shares of the same class are treated as representing the same share capital, and
  - (b) if shares are issued in respect of other shares, or are (directly or indirectly) converted into or exchanged for other shares, all such shares are treated as representing the same share capital.
- (5) This section is to be read with section 1049(3)(b) (stock dividends).

### **1027 Cap on amount of distributions affected by section 1026**

- (1) Section 1026(2) does not apply to the distributions in question so far as they, together with any affected distributions made previously but after the issue of the bonus share capital, exceed the cap.
- (2) In subsection (1) “the cap” means the total of the amounts—
  - (a) paid up, otherwise than by the receipt of new consideration, on shares representing the bonus share capital, and
  - (b) not falling to be treated as qualifying distributions.
- (3) In subsection (1) “affected distribution” means however much of a distribution made in respect of shares representing the bonus share capital—
  - (a) would, but for section 1026, be treated as a repayment of share capital, but

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- (b) cannot be so treated because of that section.
- (4) In subsection (2)(a) the reference to amounts paid up is to amounts paid up at the time of the distributions in question or previously.

### **1028 Certain payments connected with exempt distributions**

- (1) A chargeable payment made within 5 years after an exempt distribution is not to be (if it otherwise would be) treated as a repayment of share capital for the purposes of sections 1022 and 1023 (bonus issue following repayment of share capital).
- (2) The purpose of the provisions about demergers (which include this section) is set out in section 1074.
- (3) In this section—
  - (a) “chargeable payment” has the meaning given by section 1088, and
  - (b) “exempt distribution” has the meaning given by section 1075(2).

## **CHAPTER 3**

### MATTERS WHICH ARE NOT DISTRIBUTIONS

#### *Introduction*

### **1029 Overview of Chapter**

- (1) In this Chapter the following sections provide that a particular matter is not a distribution—
  - (a) section 1030 (distributions in respect of share capital on a winding up),
  - (b) section 1031 (distribution as part of a cross-border merger),
  - (c) section 1032 (interest etc paid in respect of certain securities),
  - (d) section 1033 (purchase by unquoted trading company of own shares),
  - (e) section 1049 (stock dividends),
  - (f) section 1054 (building society payments),
  - (g) section 1055 (industrial and provident societies: interest and share dividends),
  - (h) section 1056 (dividend or bonus relating to transactions with industrial and provident society), and
  - (i) section 1057 (UK agricultural or fishing co-operatives: interest and share dividends).
- (2) The following make similar provision outside this Chapter—
  - (a) section 1075 (exempt distributions), and
  - (b) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society’s business to a company: qualifying benefits).



*Distributions in a winding up*

**1030 Distribution in respect of share capital in a winding up**

A distribution made in respect of share capital in a winding up is not a distribution of a company for the purposes of the Corporation Tax Acts.

*Distribution as part of a cross-border merger*

**1031 Distribution as part of a cross-border merger**

If—

- (a) a company making a distribution as part of a merger ceases to exist (without being wound up), and
- (b) section 140E or 140F of TCGA 1992 (cross-border mergers) applies in relation to the merger,

the distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

*Payments of interest*

**1032 Interest etc paid in respect of certain securities**

(1) Any interest or other distribution which—

- (a) is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax,
- (b) is paid in respect of securities of the borrower which are special securities (as defined in section 1015), and
- (c) does not fall within paragraph E in section 1000(1) (distributions in respect of non-commercial securities),

is not a distribution for the purposes of the Corporation Tax Acts.

(2) But subsection (1) does not apply if the company to which the interest or other distribution is paid is entitled under any enactment to an exemption from tax in respect of that interest or distribution.

*Purchase of own shares*

**1033 Purchase by unquoted trading company of own shares**

(1) A payment made by a company on the redemption, repayment or purchase of its own shares is not a distribution for the purposes of the Corporation Tax Acts if—

- (a) the company is an unquoted trading company, or the unquoted holding company of a trading group, and
- (b) either Condition A or Condition B is met.

(2) Condition A is that—

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- (a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries,
  - (b) the redemption, repayment or purchase does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—
    - (i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or
    - (ii) the avoidance of tax, and
  - (c) the requirements set out in sections 1034 to 1043 (so far as applicable) are met.
- (3) Condition B is that the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase)—
- (a) is applied by the person to whom it is made in discharging a liability of that person for inheritance tax charged on a death, and
  - (b) is applied in that way within two years after the death.
- (4) But if condition B is met, subsection (1) does not apply so far as the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of—
- (a) shares in the company, or
  - (b) shares in another unquoted company which is a trading company or the holding company of a trading group.
- (5) In sections 1034 to 1043—
- “the purchase” means the redemption, repayment or purchase referred to in subsection (1), and
  - “the seller” means the owner of the shares at the time the redemption, repayment or purchase is made.
- (6) In this section and sections 1034 to 1047 references to a payment made by a company include anything else that—
- (a) is a distribution, or
  - (b) would be a distribution but for this section.

### **1034 Requirements as to residence**

- (1) The seller must be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.
- (2) If the shares are held through a nominee, the nominee must also be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.
- (3) The residence and ordinary residence of personal representatives are taken for the purposes of this section to be the same as the deceased person’s residence and ordinary residence immediately before that person’s death.
- (4) The references in this section to a person’s ordinary residence are to be ignored in the case of a company.

### **1035 Requirement as to period of ownership**

- (1) The shares must have been owned by the seller throughout the 5 years ending with the date of the purchase.
- (2) In determining whether the requirement in subsection (1) is met in a case where the seller acquired shares of the same class at different times—
  - (a) shares acquired earlier are taken into account before shares acquired later, and
  - (b) any previous disposal by the seller of shares of that class is assumed to be a disposal of shares acquired later rather than of shares acquired earlier.
- (3) If the time when any shares were acquired would be determined for the purposes of capital gains tax under any provision of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital, conversion of securities etc) then, unless the shares—
  - (a) were allotted for payment, or
  - (b) were comprised in share capital to which section 1049 (stock dividends) applies,the time when the shares were acquired is determined in the same way for the purposes of this section.

### **1036 Determining the period of ownership**

- (1) If at any time during the period mentioned in section 1035(1) the shares were transferred to the seller by a person (“the transferor”) who—
  - (a) was then the seller’s spouse or civil partner, and
  - (b) was then living with the seller (see section 1116),any period during which the shares were owned by the transferor is treated for the purposes of section 1035(1) as a period of ownership by the seller.
- (2) But subsection (1) does not apply if at the date of the purchase the transferor is alive but is no longer the seller’s spouse or civil partner living with the seller.
- (3) If the seller became entitled to the shares under the will or on the intestacy of a previous owner, or is the personal representative of a previous owner—
  - (a) any period during which the shares were owned by the previous owner, or the personal representatives of the previous owner, is treated for the purposes of section 1035(1) as a period of ownership by the seller, and
  - (b) section 1035(1) has effect as if it referred to three years instead of five.

### **1037 Requirement as to reduction of seller’s interest as shareholder**

- (1) If, immediately after the purchase, the seller owns shares in the company, the seller’s interest as a shareholder must be substantially reduced.

This is subject to section 1043.
- (2) If, immediately after the purchase, any associate of the seller owns shares in the company, the combined interests as shareholders of the seller and the seller’s associates must be substantially reduced.

This is subject to section 1043.
- (3) The seller’s interest as a shareholder is substantially reduced if (and only if) the seller’s subsequent interest is not more than 75% of the seller’s prior interest.

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This is subject to section 1038.

- (4) “The seller’s prior interest” means the total nominal value of the shares owned by the seller immediately before the purchase, expressed as a fraction of the issued share capital of the company at that time.
- (5) “The seller’s subsequent interest” means the total nominal value of the shares owned by the seller immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time.
- (6) The question whether the combined interests as shareholders of the seller and the seller’s associates are substantially reduced is determined in the same way as the question whether a seller’s interest as shareholder is substantially reduced, except that the seller is assumed to have the interests of the seller’s associates as well as the seller’s own.

### **1038 Section 1037: effect of entitlement to profits**

- (1) The seller’s interest as a shareholder is not taken to be substantially reduced for the purposes of section 1037(1) if—
  - (a) the seller would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and
  - (b) that share expressed as a fraction of the total of those profits is more than 75% of the corresponding fraction immediately before the purchase.
- (2) In determining for the purposes of subsection (1) the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts is regarded as entitled to a distribution of the amount, or maximum amount, to which the person would be entitled for a year.
- (3) In subsection (1) “profits available for distribution” has the meaning given by section 830(2) of the Companies Act 2006, but with the differences mentioned in subsections (4) and (5).
- (4) For the purposes of subsection (1) the amount of the profits available for distribution (whether immediately before or immediately after the purchase) is treated as increased—
  - (a) in the case of every company, by £100, and
  - (b) in the case of a company from which any person is entitled to periodic distributions calculated by reference to fixed rates or amounts, by a further amount equal to that required to make the distribution to which the person is entitled in accordance with subsection (2).
- (5) If the total of the sums payable by the company—
  - (a) on the purchase, and
  - (b) on any redemption, repayment or purchase of other shares of the company taking place at the same time,exceeds the amount of the profits available for distribution immediately before the purchase, that amount is treated as further increased by an amount equal to the excess.
- (6) References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

### **1039 Requirements where purchasing company is a member of a group**

- (1) This section applies if the company making the purchase is immediately before the purchase a member of a group.
- (2) In this section and sections 1040 to 1041 that group is referred to as “the purchaser’s group”.
- (3) If—
  - (a) immediately after the purchase the seller owns shares in one or more other members of the purchaser’s group (whether or not the seller then owns shares in the company making the purchase), or
  - (b) immediately after the purchase the seller owns shares in the company making the purchase, and immediately before the purchase the seller owns shares in one or more other members of the group,the seller’s interest as a shareholder in the group must be substantially reduced (see section 1040(1)).
- (4) If immediately before the purchase an associate of the seller owns shares in any member of the purchaser’s group, the combined interests as shareholders in the group of the seller and the seller’s associates must be substantially reduced (see section 1040(4)).
- (5) This section is subject to section 1043 (relaxation of requirements in certain cases).

### **1040 Determining whether interests as shareholders in a group are substantially reduced**

- (1) The seller’s interest as a shareholder in the purchaser’s group is taken to be substantially reduced if (and only if) it is not more than 75% of the corresponding interest immediately before the purchase.

This is subject to section 1041(1).

- (2) The seller’s interest as a shareholder in the group is calculated by—
  - (a) expressing the total nominal value of the shares owned by the seller in each relevant company as a fraction of the issued share capital of the company,
  - (b) adding together the fractions obtained under paragraph (a), and
  - (c) dividing the result by the number of relevant companies (including any in which the seller owns no shares).
- (3) In this section and section 1041 “relevant company” means—
  - (a) the company making the purchase, and
  - (b) any other member of the purchaser’s group in which the seller owns shares immediately before or immediately after the purchase.

This is subject to subsection (4).

- (4) The question whether the combined interests as shareholders in the purchaser’s group of the seller and the seller’s associates are substantially reduced is determined in the same way as the question whether a seller’s interest as a shareholder in a group is substantially reduced, except that—
  - (a) the seller is assumed to have the interests of the seller’s associates as well as the seller’s own, and

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- (b) references in subsection (2) and section 1041(2) to a relevant company are read accordingly.

#### **1041 Section 1040: effect of entitlement to profits**

- (1) The seller's interest as a shareholder in the purchaser's group is not taken to be substantially reduced if—
  - (a) the seller would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and
  - (b) the new entitlement exceeds 75% of the old entitlement.
- (2) In subsection (1)—
  - “the new entitlement” means the share, or the aggregate of the shares, mentioned in subsection (1)(a), expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—
    - (a) a relevant company, or
    - (b) a 51% subsidiary of a relevant company, and
  - “the old entitlement” means the corresponding fraction immediately before the purchase.
- (3) Subsections (2) to (5) of section 1038 apply for the purposes of this section as they apply for the purposes of section 1038(1).

#### **1042 Other requirements**

- (1) The seller must not, immediately after the purchase, be connected with—
  - (a) the company making the purchase, or
  - (b) any other company which is a member of the same group as that company.
- (2) The purchase must not be part of a scheme or arrangement which is designed, or likely, to result in—
  - (a) the seller, or
  - (b) an associate of the seller,
 having disqualifying interests in the company.
- (3) For the purposes of subsection (2), interests in the company are disqualifying interests if any of the requirements in subsection (1) and sections 1037 and 1039 could not be met if the person in question had those interests immediately after the purchase.
- (4) A transaction occurring within one year after the purchase is treated for the purposes of subsection (2) as part of a scheme or arrangement of which the purchase is also part.
- (5) Subsections (1) and (2) are subject to section 1043.

#### **1043 Relaxation of requirements in certain cases**

- (1) Subsection (2) applies if—
  - (a) any requirement under any of sections 1037 to 1042 which is applicable is not met in relation to the seller, but

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- (b) the seller proposed or agreed to the purchase in order that the requirement in section 1037(2) or 1039(4) could be met in respect of the redemption, repayment or purchase of shares owned by a person of whom the seller is an associate.
- (2) So far as that result is achieved through the purchase, section 1033(2) has effect as if the requirements in sections 1037 to 1042 were met in relation to the seller.

*Purchase of own shares: supplementary*

**1044 Advance clearance of payments by Commissioners**

- (1) A company may make an application under this section to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") before making a payment on the redemption, repayment or purchase of its own shares.
- (2) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will apply to it, the payment is treated as one to which section 1033 applies.
- (3) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will not apply to it, the payment is treated as one to which section 1033 does not apply.

**1045 Advance clearance: supplementary**

- (1) An application under section 1044—
  - (a) must be in writing, and
  - (b) must contain particulars of the relevant transactions.
- (2) The Commissioners may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (3) The power under subsection (2) must be exercised within 30 days of the receipt of—
  - (a) the application, or
  - (b) any further particulars previously required under subsection (2).
- (4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.
- (5) The Commissioners must notify their decision to the applicant—
  - (a) within 30 days of receiving the application, or
  - (b) if they give notice under subsection (2), within 30 days of the notice being complied with.
- (6) If particulars provided under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners, any resulting notification by the Commissioners is void.

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## **1046 Information and returns**

- (1) A company which treats a payment made by it as one to which section 1033 applies must make a return to an officer of Revenue and Customs giving details of—
  - (a) the payment, and
  - (b) the circumstances by reason of which section 1033 is regarded as applying to it.
- (2) The return must be made within 60 days after the payment.
- (3) A person connected with a company must give notice to an officer of Revenue and Customs if—
  - (a) the company treats a payment made by it as one to which section 1033 applies and in relation to which Condition A in that section is met, and
  - (b) the person knows of any scheme or arrangement of the kind mentioned in section 1042(2) that affects the payment.
- (4) The notice—
  - (a) must contain particulars of the scheme or arrangement, and
  - (b) must be given within 60 days after the person first knows of both the payment and the scheme or arrangement.
- (5) If a company treats a payment made by it as one to which section 1033 applies, an officer of Revenue and Customs may require the recipient of the payment to state—
  - (a) whether it is received by the recipient on behalf of another person, and
  - (b) if so, that person’s name and address.
- (6) Subsection (7) applies if—
  - (a) a company treats a payment made by it as one to which section 1033 applies, and
  - (b) the payment is received by a person on behalf of another person (“A”).
- (7) An officer of Revenue and Customs may require A to state—
  - (a) whether there is another person (in addition to A) on whose behalf the payment is received, and
  - (b) if so, that person’s name and address.

## **1047 Meaning of “group” and “51% subsidiary” in sections 1033 to 1047**

- (1) In this section and sections 1033 to 1046 “group” (except in the expression “trading group”) means a company which has one or more 51% subsidiaries but is not itself a 51% subsidiary of any other company, together with those subsidiaries.

This is subject to subsection (2).

- (2) If the whole or a significant part of the business carried on by an unquoted company (“the successor company”) was previously carried on by—
  - (a) the company making the purchase, or
  - (b) a company which is, apart from this subsection, a member of a group to which the company making the purchase belongs,

the successor company and any company of which it is a 51% subsidiary are treated as being members of the same group as the company making the purchase (whether



or not, apart from this subsection, the company making the purchase is a member of a group).

- (3) But subsection (2) does not apply if the successor company first carried on the business in question more than 3 years before the time of the purchase.
- (4) For the purposes of this section and sections 1033 to 1046, a company which has ceased to be a 51% subsidiary of another company before the time of the purchase is treated as continuing to be a 51% subsidiary of that company if at the time of the purchase there exist arrangements under which it could again become such a subsidiary.

#### **1048 Sections 1033 to 1047: other interpretation**

- (1) In sections 1033 to 1047—
  - “holding company” means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,
  - “quoted company” means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange,
  - “shares” includes stock,
  - “trade” does not include dealing in shares, securities, land or futures,
  - “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades,
  - “trading group” means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades, and
  - “unquoted company” means a company which is neither a quoted company nor a 51% subsidiary of a quoted company.
- (2) In the definition of “trading group” in subsection (1) “group” means a company which has one or more 75% subsidiaries, together with those subsidiaries.
- (3) References in sections 1033 to 1047 to the owner of shares are to the beneficial owner except where the shares—
  - (a) are settled property, or
  - (b) are comprised in the estate of a person who has died.In such cases the references are to the trustees of the settlement or, as the case may be, the deceased’s personal representatives.
- (4) References in sections 1033 to 1047 to a payment made by a company are to be read in accordance with section 1033(6).

#### *Stock dividends*

#### **1049 Stock dividends**

- (1) This section applies to—
  - (a) share capital issued by a UK resident company in lieu of a cash dividend, and
  - (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.
- (2) For the purposes of subsection (1)(b) shares are of a qualifying class if—

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- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
  - (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.
- (3) If the share capital is issued in a case where section 410(2), (3) or (4) of ITTOIA 2005 (stock dividend income) applies—
- (a) the share capital does not, despite paragraph C in section 1000(1) (redeemable share capital), constitute a distribution within the meaning of section 1000(1), and
  - (b) the share capital is not, for the purposes of—
    - (i) section 1022 (bonus issues following repayment of share capital), or
    - (ii) section 1026 (distributions following a bonus issue),
 treated as issued “as paid up otherwise than by the receipt of new consideration”.
- (4) This section is subject to—
- (a) section 1050, and
  - (b) paragraph 108 of Schedule 2 (special rules for share capital issued in respect of shares issued before 6 April 1975).

#### **1050 Application of section 1049 where bonus share capital is converted etc**

- (1) This section applies if bonus share capital falling within section 1049(1)(b) is converted into, or exchanged for, shares in the company of a different class.
- (2) In this section “replacement shares” means shares in the company issued—
  - (a) in connection with the conversion or exchange, and
  - (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.
- (3) Section 1049 does not apply to any replacement shares.
- (4) But if section 410 of ITTOIA 2005 (stock dividend income) applied to any of the bonus share capital, subsection (5) applies to replacement shares issued in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital to which section 410 of ITTOIA 2005 applied.
- (5) The replacement shares referred to in subsection (4)—
  - (a) do not, despite paragraph C in section 1000(1), constitute a distribution within the meaning of section 1000(1), and
  - (b) are not, for the purposes of—
    - (i) section 1022 (bonus issues following repayment of share capital), or
    - (ii) section 1026 (distributions following a bonus issue),
 treated as issued “as paid up otherwise than by the receipt of new consideration”.

#### **1051 “Bonus share capital” and “in lieu of a cash dividend”**

- (1) In sections 1049 and 1050 “bonus share capital” means—

- (a) share capital issued otherwise than wholly for new consideration, or
  - (b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.
- (2) For the purposes of section 1049(1)(a) share capital is issued by a company in lieu of a cash dividend if—
- (a) it is issued in consequence of the exercise by a person of an option conferred on the person, and
  - (b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.
- (3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only—
- (a) if the person is required to choose one or the other, but also
  - (b) if the person is offered the one subject to a right, however expressed, to choose the other instead.
- (4) The reference in subsection (2) to a person’s exercise of an option includes a person’s abandonment of, or failure to exercise, a right such as is mentioned in subsection (3)
- (b).

#### **1052 Share capital to which section 1049 applies: returns**

- (1) If a company issues, in an accounting period, share capital to which section 1049 applies (“relevant share capital”), the company must make a return of the capital for each return period in which it was issued (see section 1053).
- (2) The return must be made—
- (a) to an officer of Revenue and Customs, and
  - (b) within 30 days from the end of the return period.
- (3) A return made under this section for a return period must give the following information for any relevant share capital issued by the company in the period—
- (a) the date on which it was issued,
  - (b) the date on which the company was first required to issue it (if different from the date on which it was issued),
  - (c) details of the terms on which it was issued, and
  - (d) what its cash equivalent is under section 412 of ITTOIA 2005.
- (4) If it appears to an officer of Revenue and Customs that a company should have, but has not, made a return under this section for a particular return period, the officer may by notice require the company to do so.
- (5) If no relevant share capital was issued by the company in the return period, a return required to be made under subsection (4) must state that that is the case.
- (6) The notice under subsection (4) must specify the period within which the return must be made.
- (7) That period must be at least 30 days.

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### **1053 Return periods**

- (1) For the purposes of section 1052 a company's return periods in any accounting period are the periods that begin and end as follows.

*Rule 1*

A return period begins at the beginning of the accounting period.

*Rule 2*

If one or more quarterly days fall within the accounting period (excluding the last day of the accounting period), the end of each such day is the end of a return period, and a new return period begins immediately afterwards.

*Rule 3*

A return period ends at the end of the accounting period.

- (2) For the purposes of subsection (1) the quarterly days are 31 March, 30 June, 30 September and 31 December.

#### *Building society payments*

### **1054 Building society payments**

- (1) This section applies if—
- (a) any interest, or
  - (b) any dividend or other distribution,
- is payable in respect of shares in, or a deposit with or loan to, a building society.
- (2) No part of the interest, or of the dividend or other distribution, is a distribution of the society for corporation tax purposes.
- (3) See also section 372 of ITTOIA 2005 (which makes provision about the income tax treatment of building society dividends).

#### *Industrial and provident society payments*

### **1055 Industrial and provident societies: interest and share dividends**

- (1) Interest paid by a registered industrial and provident society in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.
- (2) If any dividend, bonus, interest or other sum—
- (a) is paid to a shareholder in a registered industrial and provident society, and
  - (b) is payable by reference to the amount of the shareholder's holding in the society's share capital,
- it is not a distribution for corporation tax purposes.
- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.
- (4) For the purposes of this section crediting an amount counts as paying it.
- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

### **1056 Dividend or bonus relating to transactions**

- (1) This section applies if—
  - (a) a dividend or bonus is granted by a registered industrial and provident society, and
  - (b) section 132 of CTA 2009 (dividends etc relating to transactions with an industrial and provident society) allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.
- (2) The dividend, or the bonus, is not a distribution for the purposes of the Corporation Tax Acts.

*Payments made by UK agricultural or fishing co-operatives*

### **1057 UK agricultural or fishing co-operatives: interest and share dividends**

- (1) Interest paid by a UK agricultural or fishing co-operative in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.
- (2) If any dividend, bonus, interest or other sum—
  - (a) is paid to a shareholder in a UK agricultural or fishing co-operative, and
  - (b) is payable by reference to the amount of the shareholder's holding in the co-operative's share capital,it is not a distribution for corporation tax purposes.
- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.
- (4) For the purposes of this section crediting an amount counts as paying it.
- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

### **1058 Meaning of “UK agricultural or fishing co-operative”**

- (1) In section 1057 “UK agricultural or fishing co-operative” means a co-operative association—
  - (a) which is established in the United Kingdom and UK resident, and
  - (b) whose primary object is assisting its members in—
    - (i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or
    - (ii) carrying on businesses consisting of the catching or taking of fish or shellfish.
- (2) In subsection (1) “co-operative association” means a body with a written constitution from which the Secretary of State is satisfied that it is in substance a co-operative association.
- (3) For the purposes of subsection (2) the Secretary of State must have regard to the way in which the body's constitution provides for its income to be applied for its members' benefit, and all other relevant provisions.

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- (4) In Northern Ireland subsections (2) and (3) apply with the substitution for “the Secretary of State” of “the Department of Agriculture and Rural Development”.

### *Supplementary provisions*

#### **1059 Associated persons**

- (1) This section and sections 1060 and 1061 contain the rules for determining whether a person is an associate of another (in relation to a company) for the purposes of this Chapter.
- (2) Two persons living together (see section 1116) who are—
  - (a) a husband and wife, or
  - (b) civil partners of each other,
 are associates of one another.
- (3) If a person (“the young person”) is under the age of 18—
  - (a) the young person is an associate of the young person’s parents, and
  - (b) the young person’s parents are associates of the young person.
- (4) If a person is connected with a company—
  - (a) the person is an associate of the company and any company controlled by it, and
  - (b) the company and any company controlled by it are associates of the person.
- (5) If a person—
  - (a) is connected with one company (“company A”), and
  - (b) has control of another company (“company B”),
 company B is an associate of company A.
- (6) If one person is accustomed to act on the directions of another in relation to the affairs of a company, the two persons are associates of one another in relation to that company.

#### **1060 Associated persons: trustees**

- (1) If shares in a company are held by the trustees of a settlement then, in relation to the company—
  - (a) the trustees are associates of—
    - (i) any person who (directly or indirectly) provided property to the trustees or has made a reciprocal arrangement for another to do so,
    - (ii) any person who is, by virtue of section 1059(2) or (3), an associate of a person within sub-paragraph (i), and
    - (iii) any person who is, or may become, beneficially entitled to a significant interest in the shares, and
  - (b) any such person is an associate of the trustees.
- (2) Subsection (1) does not apply to shares held on trusts which relate exclusively to a registered pension scheme.
- (3) Subsection (1) does not apply to shares held on trusts which—
  - (a) are exclusively for the benefit of—

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- (i) the employees, or the employees and directors, of the company referred to in subsection (1) (or of companies in a group to which that company belongs), or
    - (ii) their dependants, and
  - (b) are not wholly or mainly for the benefit of directors or their relatives.
- (4) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the settled property, excluding any property in which the person is not and cannot become beneficially entitled to an interest.
- (5) In subsection (3) "group" means a company which has one or more 51% subsidiaries, together with those subsidiaries.

### **1061 Associated persons: personal representatives**

- (1) If shares in a company are comprised in the estate of a person who has died then, in relation to the company—
- (a) the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and
  - (b) any such person is an associate of the personal representatives.
- (2) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the property comprised in the estate concerned, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

### **1062 Connected persons**

- (1) This section contains the rules for determining whether a person is connected with a company for the purposes of this Chapter.
- (2) A person is connected with a company if the person directly or indirectly possesses, or is entitled to acquire, more than 30% of—
- (a) the issued ordinary share capital of the company,
  - (b) the loan capital and the issued share capital of the company, or
  - (c) the voting power in the company.
- (3) If a person—
- (a) acquired, or became entitled to acquire, loan capital of a company in the ordinary course of a business which includes the lending of money, and
  - (b) takes no part in the management or conduct of the company,
- the person's interest in that loan capital is ignored for the purposes of subsection (2).
- (4) A person is connected with a company if the person (directly or indirectly)—
- (a) possesses, or
  - (b) is entitled to acquire,
- rights that would, in the event of a winding up or in any other circumstances, entitle the person to receive more than 30% of the assets of the company which would then be available for distribution to equity holders of the company.
- (5) For the purposes of subsection (4)—
- (a) "equity holder" is to be read in accordance with sections 158 to 164, and

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- (b) the percentage of the assets of a company to which a person would be entitled is to be determined in accordance with sections 166 and 167.
- (6) In section 166 as it applies for the purposes of subsection (4)—
  - (a) references to company A are to be read as including a person who is not a company, and
  - (b) references to a winding up are to be read as including references to any other circumstances in which assets of a company are available for distribution to equity holders.
- (7) A person who has control of a company is connected with it.

### **1063 Section 1062: supplementary**

- (1) References in section 1062 to the loan capital of a company are to any debt incurred by the company—
  - (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt.
- (2) For the purposes of subsection (1)(c) the amount of the debt includes any premium on the debt.
- (3) For the purposes of section 1062 a person is treated as entitled to acquire anything which the person—
  - (a) is entitled to acquire at a future date, or
  - (b) will at a future date be entitled to acquire.
- (4) For the purposes of this section and section 1062 a person is assumed to have the rights and powers of the person's associates (as well as the person's own rights and powers).

## **CHAPTER 4**

### SPECIAL RULES FOR DISTRIBUTIONS MADE BY CERTAIN COMPANIES

#### *Close companies*

### **1064 Certain expenses of close companies treated as distributions**

- (1) This section applies if a close company incurs an expense in, or in connection with, the provision for any participator of—
  - (a) living or other accommodation,
  - (b) entertainment,
  - (c) domestic or other services, or
  - (d) other benefits or facilities of any kind.
- (2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the participator of an amount equal to—
  - (a) the expense, less



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- (b) any part of the expense that the participator makes good to the company (so far as not already deducted in calculating the amount of the expense in accordance with subsection (3)).
- (3) For the purposes of subsection (2)(a), the amount of the expense is equal to what would, under Chapter 6, 7 or 10 of Part 3 of ITEPA 2003, be the cash equivalent of the resultant benefit to the participator.
- (4) Subsection (2) is subject to sections 1065 and 1066, and to any other express exceptions.

### 1065 Exception for benefits treated as employment income etc

Section 1064 does not apply to expenses incurred—

- (a) in the provision for a person or persons mentioned in the first column of the table in this subsection of anything mentioned in the corresponding entry in the second column of the table, or
- (b) in connection with such provision.

<i>Person benefiting</i>	<i>Benefit</i>
A person employed in employment to which Part 3 of ITEPA 2003 (benefits etc treated as employment income) applies without the exclusion in section 216 of that Act (provisions not applicable to lower-paid employment).	Such benefits as are mentioned in— (a) Chapter 6, 7 or 10 of Part 3 of ITEPA 2003 (cars and vans, loans and other benefits), or (b) section 223 of that Act (payments on account of director’s tax).
Any person.	Living accommodation which is (within the meaning of Chapter 5 of Part 3 of ITEPA 2003) provided by reason of the person’s employment.
The spouse or civil partner, children or dependants of a person (“the employee”) employed by the company.	A pension, annuity, lump sum, gratuity or other like benefit to be given on the employee’s death or retirement.

### 1066 Exception for certain transfers between UK resident companies

- (1) Section 1064 does not apply if the company and the participator are both UK resident and—
  - (a) one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company which is also UK resident, and
  - (b) the benefit to the participator arises on a transfer of assets or liabilities—
    - (i) by the company to the participator, or
    - (ii) to the company by the participator,
 or in connection with such a transfer.
- (2) In determining whether one body corporate (“A”) is a 51% subsidiary of another (“B”) for the purposes of subsection (1), B is treated as not being the owner of—
  - (a) any share capital which it owns directly in a body corporate as trading stock,

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- (b) any share capital which it owns indirectly, and which is owned directly by a body corporate as trading stock, or
  - (c) any share capital which it owns directly or indirectly in a body corporate that is not UK resident.
- (3) For the purposes of subsection (2) share capital owned by a body is owned as trading stock if (and only if) a profit on the sale of the shares would be treated as a trading receipt of the body's trade.

### **1067 Companies acting in concert or under arrangements**

- (1) Subsection (2) applies if—
- (a) each of two or more close companies makes a payment,
  - (b) each of those payments is made to a person who—
    - (i) is not a participator in the company making the payment, but
    - (ii) is a participator in another of those companies, and
  - (c) the companies are acting in concert or under arrangements made by any person.
- (2) For the purposes of sections 1064 to 1066, each payment made to a person as mentioned in subsection (1) is treated as if it had been made to that person by the company in which that person is a participator.
- (3) Subsections (1) and (2) apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as they apply in relation to the making of a payment.

### **1068 Meaning of “participator” in sections 1064 to 1067**

- (1) In sections 1064 to 1067 “participator” has the same meaning as in Part 10 (see section 454).
- (2) Section 1069 extends the meaning given by subsection (1).

### **1069 Additional persons treated as participators**

- (1) In sections 1064 to 1067 any reference to a participator includes an associate of a participator.
- (2) If a company (“A”) controls another company (“B”), a person who—
- (a) is a participator in A, or
  - (b) is an associate of a participator in A,
- is treated for the purposes of sections 1064 to 1067 as being a participator in B as well.
- (3) In this section the following expressions have the same meaning as in Part 10 (close companies)—
- (a) “associate” (see section 448),
  - (b) “control” (see sections 450 and 451), and
  - (c) “participator” (see section 454).

### *Companies carrying on a mutual business*

#### **1070 Companies carrying on a mutual business**

- (1) Subsection (2) applies if a company carries on a business (“the mutual business”) of—
  - (a) mutual trading,
  - (b) mutual insurance, or
  - (c) other mutual business.
- (2) The provisions of the Corporation Tax Acts relating to distributions apply to relevant distributions made by the company only so far as they are made out of—
  - (a) profits of the company which are brought into charge to corporation tax, or
  - (b) franked investment income.This is subject to subsection (4).
- (3) In subsection (2) “relevant distributions” means distributions which—
  - (a) are made to persons participating in the mutual activities of the mutual business, and
  - (b) derive from those activities.
- (4) If a company carries on a mutual life assurance business, the provisions of the Corporation Tax Acts relating to distributions do not apply to distributions made by the company which—
  - (a) are made to persons participating in the mutual activities of the business, and
  - (b) derive from those activities.
- (5) Subject to subsections (1) to (4), the fact that—
  - (a) a distribution made by a company carrying on a mutual business is derived from the mutual activities of that business, and
  - (b) the recipient is a company participating in those activities,does not affect the character that the payment or other receipt has for the purposes of corporation tax or income tax in the hands of the recipient.
- (6) In subsection (2) “profits” means income and chargeable gains.

### *Companies not carrying on a business*

#### **1071 Companies not carrying on a business**

- (1) This section applies if a company meets conditions A, B and C.
- (2) Condition A is that the company does not carry on, and has never carried on—
  - (a) a trade, or
  - (b) a business of holding investments.
- (3) Condition B is that the company does not hold, and has never held, an office.
- (4) Condition C is that the company is not established for purposes which include—
  - (a) carrying on a trade,
  - (b) carrying on a business of holding investments, or
  - (c) holding an office.

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- (5) The provisions of the Corporation Tax Acts relating to distributions apply to distributions made by the company only so far as the distributions are made out of—
- (a) profits of the company which are brought into charge to corporation tax, or
  - (b) franked investment income.
- (6) In subsection (5) “profits” means income and chargeable gains.

#### *Members of a 90% group*

### **1072 Members of a 90% group**

- (1) In the Corporation Tax Acts “distribution”, in relation to a company which is a member of a 90% group, includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.
- (2) Subsection (1) is without prejudice to paragraph B in section 1000(1) (distributions, other than dividends, in respect of shares) as extended by section 1113(1).
- (3) Nothing in subsection (1) requires a company to be treated as making a distribution to any other company which is in the same group and is UK resident.
- (4) In this section “90% group” means a company and all its 90% subsidiaries.

## **CHAPTER 5**

### **DEMURGERS**

#### *Introduction*

### **1073 Key terms etc**

- (1) The following are key terms in this Chapter—
  - (a) “chargeable payment” (see sections 1088 and 1089),
  - (b) “company concerned in an exempt distribution” (see section 1090),
  - (c) “the distributing company” (see section 1079),
  - (d) “exempt distribution” (defined in section 1075), and
  - (e) “relevant company” (defined in section 1080).
- (2) For a further rule about chargeable payments made within 5 years after an exempt distribution see section 1028 (rule that they are not treated as repayments of capital for certain purposes).

### **1074 Purpose of provisions about demurgers**

- (1) The purpose of the provisions about demurgers is to facilitate certain transactions by which trading activities carried on by a single company or group are divided so as to be carried on—
  - (a) by two or more companies not belonging to the same group, or
  - (b) by two or more independent groups.

- (2) In subsection (1) “the provisions about demergers” means—
- (a) this Chapter, except section 1078 (and section 1075, so far as relating to section 1078), and
  - (b) section 1028 (chargeable payments not treated as repayments of share capital).

#### *Exempt distributions*

### **1075 Exempt distributions**

- (1) An exempt distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.
- (2) In this Chapter “exempt distribution” means a distribution which is an exempt distribution by virtue of section 1076, 1077 or 1078.

### **1076 Transfer of shares in subsidiaries to members**

A distribution is an exempt distribution if—

- (a) it consists of the transfer by a company to all or any of its members of shares in one or more companies which are its 75% subsidiaries,
- (b) each of conditions A to F in sections 1081 and 1082 is met in respect of the distribution, and
- (c) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

### **1077 Transfer by distributing company and issue of shares by transferee company**

- (1) This section applies to a distribution which consists of both of the following—
- (a) the transfer by a company to one or more other companies (“the transferee company or companies”) of—
    - (i) a trade or trades, or
    - (ii) shares in one or more companies which are 75% subsidiaries of the company making the transfer, and
  - (b) the issue of shares by the transferee company or companies to all or any of the members of the company making the transfer.
- (2) A distribution to which this section applies is an exempt distribution if—
- (a) each of conditions A to D in section 1081 and each of conditions G to K in section 1083 is met in respect of the distribution, and
  - (b) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

### **1078 Division of business in a cross-border transfer**

- (1) This section applies to a distribution which consists of—
- (a) the transfer of part of a business by a company to one or more other companies (“the transferee company or companies”), and
  - (b) the issue of shares by the transferee company or companies to the members of the company making the transfer.

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- (2) A distribution to which this section applies is an exempt distribution if either—
- (a) each of the tests in paragraphs (a) to (f) of section 140A(1A) of TCGA 1992 (cross-border transfers: division of UK business) is met in relation to it, or
  - (b) each of the tests in paragraphs (a) to (e) of section 140C(1A) of TCGA 1992 (cross-border transfers: division of non-UK business) is met in relation to it.

### **1079 “The distributing company”**

References in this Chapter to the distributing company are—

- (a) in the case of a distribution falling within paragraph (a) of section 1076, to the company that makes the transfer of shares mentioned in that paragraph,
- (b) in the case of a distribution falling within section 1077(1), to the company that makes the transfer mentioned in section 1077(1)(a), and
- (c) in the case of a distribution falling within section 1078(1), to the company that makes the transfer of part of a business mentioned in section 1078(1)(a).

### **1080 Meaning of “relevant company”**

- (1) This section gives the meaning of “relevant company” in this Chapter.
- (2) In the case of a distribution falling within section 1076(a) the relevant companies are—
  - (a) the distributing company, and
  - (b) each subsidiary whose shares are transferred as mentioned in section 1076(a).
- (3) In the case of a distribution falling within section 1077(1), the relevant companies are—
  - (a) the distributing company,
  - (b) each transferee company mentioned in section 1077(1)(a), and
  - (c) each subsidiary whose shares are transferred as mentioned in section 1077(1)(a)(ii).
- (4) In the case of a distribution falling within section 1078(1), the relevant companies are—
  - (a) the distributing company, and
  - (b) each transferee company mentioned in section 1078(1)(a).

*Exemption by virtue of section 1076 or 1077: conditions*

### **1081 General conditions**

- (1) Condition A is that each relevant company must be resident in a member State at the time of the distribution.
- (2) Condition B is that at the time of the distribution—
  - (a) the distributing company must be either a trading company or a member of a trading group, and
  - (b) each subsidiary whose shares are transferred as mentioned in section 1076(a) or 1077(1)(a)(ii) must be either a trading company or the holding company of a trading group.

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- (3) Condition C is that the distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which—
  - (a) before the distribution are carried on by a single company or group, and
  - (b) after the distribution will be carried on by two or more companies or groups.
- (4) Condition D is that the distribution must not form part of a scheme or arrangement to which subsection (5) applies.
- (5) This subsection applies to any scheme or arrangement the main purpose or one of the main purposes of which is—
  - (a) the avoidance of tax,
  - (b) the making of a chargeable payment (see section 1088),
  - (c) the making, in pursuance of a scheme or arrangements with a company (“A”) or with any of its main participators, of what would be a chargeable payment if A were an unquoted company,
  - (d) the acquisition by any person or persons, other than the members of the distributing company, of control of—
    - (i) the distributing company,
    - (ii) any other relevant company, or
    - (iii) any company which belongs to the same group as the distributing company or any other relevant company,
  - (e) the cessation of a trade after the distribution, or
  - (f) the sale of a trade after the distribution.
- (6) Subsections (5)(b) and (c) are without prejudice to the width of subsection (5)(a).
- (7) In subsection (5)—

“group” means a company which has one or more 51% subsidiaries together with those subsidiaries,

“main participators” has the meaning given by section 1089(1)(b), and

“tax” includes stamp duty and stamp duty land tax.

#### **1082 Conditions for distributions within section 1076(a)**

- (1) Condition E is that the shares mentioned in section 1076(a)—
  - (a) must not be redeemable,
  - (b) must constitute the whole or substantially the whole of the distributing company’s holding of the ordinary share capital of the subsidiary, and
  - (c) must confer the whole or substantially the whole of the distributing company’s voting rights in the subsidiary.
- (2) Condition F is that the distributing company must after the distribution be either—
  - (a) a trading company, or
  - (b) the holding company of a trading group.But see subsections (3) and (4).
- (3) Condition F need not be met if the distributing company is a 75% subsidiary of another company.
- (4) Condition F need not be met if—

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- (a) the transfer mentioned in section 1076(a) relates to two or more 75% subsidiaries of the distributing company, and
- (b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.

### **1083 Conditions for distributions within section 1077(1)**

- (1) Condition G is that if a trade is transferred, the distributing company must either—
  - (a) not retain any interest in that trade, or
  - (b) retain only a minor interest in it.
- (2) Condition H is that if shares in a subsidiary are transferred those shares—
  - (a) must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary, and
  - (b) must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary.
- (3) Condition I is that the only or main activity of the transferee company, or each transferee company, after the distribution must be—
  - (a) the carrying on of the trade, or
  - (b) the holding of the shares transferred to it.
- (4) Condition J is that the shares issued by the transferee company or each transferee company—
  - (a) must not be redeemable,
  - (b) must constitute the whole or substantially the whole of its issued ordinary share capital, and
  - (c) must confer the whole or substantially the whole of the voting rights in that company.
- (5) Condition K is that the distributing company must after the distribution be either a trading company or the holding company of a trading group.

### **1084 Cases where condition K does not apply**

- (1) Condition K need not be met if the distributing company is a 75% subsidiary of another company.
- (2) Condition K need not be met if—
  - (a) there are two or more transferee companies each of which has transferred to it—
    - (i) a trade, or
    - (ii) shares in a separate 75% subsidiary of the distributing company, and
  - (b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.



### **1085 Conditions to be met if the distributing company is a 75% subsidiary**

- (1) Condition L is that the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group.
- (2) Condition M is that the distribution (“the original distribution”) must be followed by one or more other distributions (“further distributions”) falling within section 1076(a) or 1077(1)(a)(ii) which—
  - (a) are exempt distributions, and
  - (b) comply with subsection (3).
- (3) To comply with this subsection a further distribution must result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the original distribution becoming members of—
  - (a) the transferee company or each transferee company to which a trade was transferred by the distributing company,
  - (b) the subsidiary or each subsidiary whose shares were transferred by the distributing company, or
  - (c) a company (other than the holding company) of which the company or companies mentioned in paragraph (a) or (b) are 75% subsidiaries.

#### *Chargeable payments*

### **1086 Chargeable payments connected with exempt distributions**

- (1) This section applies if a chargeable payment is made within 5 years after an exempt distribution.
- (2) The amount or value of the payment is chargeable—
  - (a) to income tax, or
  - (b) to corporation tax under the charge to corporation tax on income.
- (3) An amount charged to income tax under subsection (2) is treated for income tax purposes as an amount of income.
- (4) Income tax under subsection (2) is charged on the full amount or value of the payment made in the tax year.
- (5) The person liable for any income tax charged under subsection (2) is the person receiving or entitled to the payment.
- (6) References in this section and sections 1087 to 1094 to a payment include—
  - (a) the assumption of a liability, and
  - (b) any other transfer of money’s worth.

### **1087 Chargeable payments not deductible in calculating profits**

If a chargeable payment is made within 5 years after an exempt distribution, the chargeable payment is treated as a distribution for the purposes of section 1305 of CTA 2009 (no deduction for distributions in calculation of a company’s profits).

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### **1088 Meaning of “chargeable payment”**

- (1) In this Chapter “a chargeable payment” means any payment which—
  - (a) meets each of conditions A to D in this section, or
  - (b) is a chargeable payment by virtue of section 1089.
- (2) Condition A is that the payment is made by a company concerned in an exempt distribution and is made (directly or indirectly)—
  - (a) to a member of that company, or
  - (b) to a member of any other company concerned in the exempt distribution.
- (3) Condition B is that the payment is made—
  - (a) in connection with the shares in the company making the payment,
  - (b) in connection with the shares in any other company concerned in the exempt distribution, or
  - (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).
- (4) Condition C is that the payment—
  - (a) is not made for genuine commercial reasons, or
  - (b) forms part of a tax avoidance scheme.
- (5) Condition D is that the payment—
  - (a) is not a distribution or an exempt distribution, and
  - (b) is not made to a company that belongs to the same group as the company making the payment.
- (6) In this section and section 1089—
 

“tax avoidance scheme” means a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

“tax” includes stamp duty and stamp duty land tax.
- (7) This section is to be read with section 1089.

### **1089 Meaning of “chargeable payment”: unquoted companies**

- (1) This section applies if a company concerned in an exempt distribution is an unquoted company and a person makes a payment (to any person) in pursuance of a scheme or arrangement made—
  - (a) with the unquoted company, or
  - (b) if the unquoted company—
    - (i) is under the control of 5 or fewer persons (its “main participators”), and
    - (ii) is not excepted by subsection (6),
 with any of the unquoted company’s main participators.
- (2) The payment is a chargeable payment if it meets each of conditions B1 to D1.
- (3) Condition B1 is that the payment is made—
  - (a) in connection with the shares in the company (if it is a company) making the payment,

- (b) in connection with the shares in any company concerned in the exempt distribution, or
  - (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).
- (4) Condition C1 is that the payment—
- (a) is not made for genuine commercial reasons, or
  - (b) forms part of a tax avoidance scheme.
- (5) Condition D1 is that the payment (if made by a company)—
- (a) is not a distribution or an exempt distribution, and
  - (b) is not made to a company that belongs to the same group as that company.
- (6) The unquoted company is excepted for the purposes of subsection (1)(b)(ii) if—
- (a) it is under the control of (and only of) a company, and
  - (b) that company is not under the control of 5 or fewer persons.

#### **1090 Meaning of “company concerned in an exempt distribution”**

- (1) For the purposes of this Chapter the companies concerned in an exempt distribution are—
- (a) any relevant company (as defined in section 1080), and
  - (b) any other company which was connected with any relevant company for the whole or any part of the affected period.
- (2) In this section “the affected period” means the period—
- (a) beginning with the exempt distribution, and
  - (b) ending with the making of the payment in question.
- (3) For the purposes of this section, if a company (“A”) is connected with another company (“B”) in the affected period, A is also connected in that period with any company with which B is connected (with or without the help of this subsection) in that period.

#### *Advance clearance*

#### **1091 Advance clearance of distributions**

- (1) Before a distribution is made, the distributing company may apply under this section to the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”).
- (2) If, before the distribution is made, the Commissioners notify that company that they are satisfied that it will be an exempt distribution, the distribution is treated as an exempt distribution.

#### **1092 Advance clearance of payments**

- (1) If—
- (a) a person intending to make a payment applies under this section to the Commissioners, and

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- (b) before the payment is made the Commissioners notify the person that they are satisfied that the payment meets the conditions set out in subsection (2), the payment is not treated as a chargeable payment.
- (2) The conditions are that the payment—
  - (a) will be made for genuine commercial reasons, and
  - (b) will not form part of a scheme or arrangement the main 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) A company which—
  - (a) becomes connected with another company, or
  - (b) ceases to be connected with another company,
 may make an application under subsection (1) with respect to any payments that may be made by it at any time after becoming or ceasing to be connected with the company in question (whether or not there is any present intention to make any payments).
- (5) If the Commissioners give a notification on an application made by virtue of subsection (4), no payment to which the notification relates is to be treated as a chargeable payment merely because the company is or has been connected with the other company.

### **1093 Requirements relating to applications for clearance**

- (1) Any application under section 1091 or 1092—
  - (a) must be in writing, and
  - (b) must contain particulars of the relevant transactions.
- (2) The Commissioners may by notice require a person making an application under section 1091 or 1092 to provide further particulars for the purpose of enabling them to make their decision.
- (3) The power under subsection (2) must be exercised within 30 days of the receipt of—
  - (a) the application, or
  - (b) any further particulars previously required under subsection (2).
- (4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.

### **1094 Decision of the Commissioners or tribunal**

- (1) The Commissioners must notify their decision to the person making the application under section 1091 or 1092—
  - (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 1093(2), within 30 days of when the notice is complied with.
- (2) Subsection (3) applies if the Commissioners—
  - (a) (in the case of an application under section 1091) notify the applicant that they are not satisfied that the distribution will be an exempt distribution,

- (b) (in the case of an application under section 1092) notify the applicant that they are not satisfied that a payment meets the conditions set out in section 1092(2), or
  - (c) (in either case) do not notify their decision to the applicant within the time required by subsection (1).
- (3) The applicant may require the Commissioners to transmit the application, together with any notice given and further particulars provided under section 1093(2), to the tribunal.
- (4) In that event, any notification by the tribunal has effect for the purposes of this section as if it were a decision of the Commissioners.
- (5) The right under subsection (3) must be exercised within 30 days of—
  - (a) the notification of the Commissioners' decision, or
  - (b) the time by which the Commissioners are required to notify their decision to the applicant.
- (6) If any particulars provided under section 1093 in relation to an application under section 1091 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the distribution will be an exempt distribution is void.
- (7) If any particulars provided under section 1093 in relation to an application under section 1092 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the payment in question meets the conditions set out in section 1092(2) is void.

#### *Information and returns*

##### **1095 Exempt distributions: returns**

- (1) A company which makes an exempt distribution must make a return to an officer of Revenue and Customs.
- (2) The return must give details of—
  - (a) the distribution, and
  - (b) the circumstances by reason of which it is exempt.
- (3) The return must be made within 30 days after the distribution.

##### **1096 Chargeable payments etc: returns**

- (1) A person must make a return to an officer of Revenue and Customs if—
  - (a) the person makes a chargeable payment within 5 years after the making of an exempt distribution, and
  - (b) the chargeable payment consists of a transfer of money's worth.
- (2) The return under subsection (1) must give details of—
  - (a) the transaction effecting the transfer,
  - (b) the name and address of each recipient,

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- (c) the value of what is transferred to each recipient, and
  - (d) any payment of money which accompanies the transfer and is itself a chargeable payment.
- (3) A person must make a return to an officer of Revenue and Customs if, within 5 years after the making of an exempt distribution, the person makes a payment or transfer of money's worth which—
- (a) is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, but
  - (b) would be a chargeable payment if that were not so.
- (4) In subsection (3)(a) “tax” includes stamp duty and stamp duty land tax.
- (5) Subsection (3) does not apply if a notification under section 1092(5) (payment not to be treated as a chargeable payment merely because of a connection between two companies) has effect in relation to the payment or transfer.
- (6) In the case of a transfer, the return under subsection (3) must give the following information—
- (a) details of the transaction which effects the transfer,
  - (b) the name and address of each recipient,
  - (c) the value of what is transferred to each recipient, and
  - (d) a statement of the circumstances by reason of which the transfer is not a chargeable payment.
- (7) In the case of a payment, the return under subsection (3) must give the following information—
- (a) the name and address of each recipient,
  - (b) the amount of the payment made to each recipient, and
  - (c) a statement of the circumstances by reason of which the payment is not a chargeable payment.
- (8) The return under subsection (1) or (3) must be made within 30 days after the transfer or payment.

### **1097 Information about person for whom a payment is received**

- (1) An officer of Revenue and Customs may require any recipient of a chargeable payment to state—
- (a) whether it is received by the recipient on behalf of another person, and
  - (b) if so, that person's name and address.
- (2) An officer of Revenue and Customs may require a person (“A”) on whose behalf a chargeable payment is received to state—
- (a) whether there is another person (in addition to A) on whose behalf the payment is received, and
  - (b) if so, that person's name and address.

### *Supplementary*

#### **1098 Meaning of “unquoted company”**

- (1) A company is an unquoted company for the purposes of this Chapter if none of its shares is—
  - (a) listed in the Official List of the Stock Exchange, and
  - (b) dealt in on the Stock Exchange regularly or from time to time.
- (2) But a company is not an unquoted company for the purposes of this Chapter if it is under the control of (and only of) one or more companies which are not unquoted companies for those purposes.
- (3) The reference in subsection (1) to shares does not include debenture stock, loan stock, preferred shares or preferred stock.

#### **1099 Other definitions etc**

- (1) In this Chapter—
  - “control” has the same meaning as in Part 10 (see sections 450 and 451),
  - “group” means a company which has one or more 75% subsidiaries together with those subsidiaries (but there is a separate definition of “group” for the purposes of section 1081(5)(d)),
  - “holding company” means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,
  - “member” where the reference is to a member of a company—
    - (a) in section 1088(2) includes a person who is a member otherwise than by virtue of holding shares forming part of the ordinary share capital of the company, but
    - (b) elsewhere only includes persons who are members by virtue of holding shares forming part of the ordinary share capital of the company,
  - “shares” includes stock,
  - “trade”, except in subsection (4), does not include dealing in shares, securities, land, trades or commodity futures,
  - “trading activities” is to be read in accordance with the above definition of “trade”,
  - “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades, and
  - “trading group” means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades.
- (2) In determining for the purposes of sections 1076(a), 1077(1), 1082(4) or 1084(2) whether a company (“A”) whose shares are transferred by the distributing company is a 75% subsidiary of the distributing company, ignore any share capital of A which is owned indirectly by the distributing company.
- (3) In determining for the purposes of this Chapter whether one company is a 75% subsidiary of another, the other company is treated as not being the owner of—
  - (a) any share capital which it owns directly in a body corporate as trading stock, or

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- (b) any share capital which it owns indirectly and which is owned directly by a body corporate as trading stock.
- (4) For the purposes of subsection (3) share capital owned by a person is owned as trading stock if (and only if) a profit on a sale of the shares would be treated as a trading receipt of that person's trade.

## CHAPTER 6

### INFORMATION AND RETURNS: FURTHER PROVISIONS

#### *General duties to provide information*

#### **1100 Qualifying distributions: right to request a statement**

- (1) If a company makes a qualifying distribution, the recipient is entitled to ask the company to provide a statement in writing showing—
  - (a) the amount or value of the distribution, and
  - (b) the amount of the tax credit (under section 1109(2) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the distribution.
- (2) For the purposes of subsection (1)(b) it does not matter whether or not the recipient is in fact an eligible person.
- (3) The request must be in writing.
- (4) The company which makes the distribution has a duty to comply with a request under subsection (1), and that duty is enforceable by the recipient.
- (5) In this section “eligible person” means a person who is entitled to a tax credit in respect of the dividend.
- (6) This section does not affect the operation of section 1104 (duty to provide tax certificates).

#### **1101 Non-qualifying distributions etc: returns and information**

- (1) If a company makes a distribution which is not a qualifying distribution, it must make a return to an officer of Revenue and Customs.
- (2) The return must—
  - (a) contain particulars of the transaction giving rise to the distribution,
  - (b) state the name and address of the recipient, or each recipient, of the distribution, and
  - (c) state the amount or value of the distribution received by the recipient, or each recipient.
- (3) The return must be made—
  - (a) within 14 days from the end of the accounting period in which the distribution is made, or



- (b) if the date on which the distribution is made does not fall in an accounting period, within 14 days from that date.
- (4) If it is not apparent whether or not a transaction gives rise to a distribution which is not a qualifying distribution, the company—
  - (a) must make a return to an officer of Revenue and Customs containing particulars of the transaction, and
  - (b) must do so within the time limit that would be given by subsection (3) if the transaction did give rise to such a distribution.
- (5) If subsection (4) applies, an officer of Revenue and Customs may serve a notice on the company requiring it to provide any further information in relation to the transaction that the officer reasonably requires.
- (6) If it appears to an officer of Revenue and Customs that particulars of any transaction should have been, but have not been, included in a return under subsection (1) or (4), the officer may serve a notice on the company requiring it to provide any information relating to the transaction that the officer reasonably requires.
- (7) The company must provide the information required under subsection (5) or (6) within the time specified in the notice.

#### **1102 Non-qualifying distributions etc: additional information**

- (1) This section—
  - (a) gives officers of Revenue and Customs power to require persons to provide information for the purposes of section 1101, and
  - (b) applies only if section 1101(1), (4) or (6) applies.
- (2) An officer of Revenue and Customs may, for the purposes of section 1101, by notice require any person in whose name any shares or loan capital are registered—
  - (a) to state whether or not that person is the beneficial owner of the shares or loan capital, and
  - (b) if that person is not the beneficial owner of the shares or loan capital, to provide the name and address of the person on whose behalf the shares or loan capital are registered in that person's name.
- (3) Subsections (4) and (5) apply if a company (“the issuing company”) appears to an officer of Revenue and Customs to be a close company.
- (4) The officer may, for the purposes of section 1101, by notice require the issuing company to provide the officer with—
  - (a) particulars of any bearer securities issued by the company,
  - (b) the names and addresses of the persons to whom the securities were issued, and
  - (c) details of the amounts issued to each person.
- (5) The officer may, for the purposes of section 1101, by notice require—
  - (a) any person to whom bearer securities were issued by the company, or
  - (b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

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to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

- (6) In this section—
- “securities” includes—
- (a) shares, stocks, bonds, debentures and debenture stock, and
  - (b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company, and
- “loan creditor” has the meaning given by section 453.

### **1103 Power to modify or replace sections 1101 and 1102**

- (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations modify, supplement or replace any of the provisions of sections 1101 and 1102 for the purpose stated in subsection (2).
- (2) That is the purpose of requiring UK resident companies to—
  - (a) make returns, and
  - (b) give information,
 to an officer of Revenue and Customs in respect of distributions made by the companies which are not qualifying distributions.
- (3) References in this Act and in any other enactment to sections 1101 and 1102 are to be read as including a reference to any regulations made under this section.
- (4) Regulations under this section may authorise the Commissioners to make special arrangements as regards the matters specified in subsection (5) if in their opinion there are circumstances justifying it.
- (5) Those matters are—
  - (a) the repayment of income tax borne by a company, and
  - (b) the payment to a company of amounts in respect of any tax credit to which it is entitled.
- (6) Regulations under this section may—
  - (a) make different provision for different descriptions of companies and for different circumstances, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (7) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.

*Companies and nominees required to provide tax certificates*

### **1104 Company distributing dividend or interest: duty to provide tax certificates**

- (1) This section applies if a distribution consisting of any dividend or interest is made by a company which is—
  - (a) a company as defined in section 1(1) of the Companies Act 2006, or

- (b) a company created by letters patent or by or in pursuance of an Act.
- (2) If the company makes a payment of dividend or interest into a bank or building society account held by any person the company must, within a reasonable period, send a tax certificate (see section 1106) to either—
  - (a) the bank or building society, or
  - (b) the person holding the account.
- (3) If the company makes a payment of dividend or interest to a person without paying it into a bank or building society account, the company must, within a reasonable period, send a tax certificate to that person.

### **1105 Duties of nominees**

- (1) This section applies if—
  - (a) a tax certificate is received by a person under section 1104(2)(b) or (3), and
  - (b) the sum concerned (or part of it)—
    - (i) is paid to that person as nominee for another person, or
    - (ii) is paid into the account of that person as nominee for another person.
- (2) If the nominee pays the sum (or the part concerned) into a bank or building society account held by the other person the nominee must, within a reasonable period, send a tax certificate to either—
  - (a) the bank or building society, or
  - (b) the other person.
- (3) If the nominee pays the sum (or the part concerned) to the other person without paying it into a bank or building society account held by that person, the nominee must, within a reasonable period, send a tax certificate to that person.

### **1106 Meaning of “tax certificate” etc**

- (1) This section gives the meaning of “bank”, “send” and “tax certificate” in sections 1104 and 1105.
- (2) “Bank” has the meaning given by section 1120.
- (3) “Send” means send by post.
- (4) “Tax certificate”, in relation to a payment of dividend or interest, means a written statement showing—
  - (a) the amount of the dividend or interest paid,
  - (b) the date of the payment, and
  - (c) the amount of the tax credit (under section 1109(2) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the dividend or interest.
- (5) In subsection (4)(c) “eligible person” means a person who is entitled to a tax credit in respect of the dividend or interest.
- (6) But for the purposes of subsection (4)(c) it does not matter whether or not any person is in fact entitled to a tax credit in respect of the dividend or interest.

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### **1107 Penalties**

- (1) A person who fails to comply with section 1104(2) or (3) or section 1105(2) or (3) is liable to a penalty of £60 for each offence.
- (2) But, in respect of offences connected with any one distribution of dividends or interest, the total amount of any penalties imposed on a person under subsection (1) must not exceed £600.

### **1108 Alternative means of compliance with sections 1104 and 1105**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that a person may comply with section 1104(2) or (3) or section 1105(2) or (3) either—
  - (a) by acting in accordance with the subsection concerned, or
  - (b) by acting in accordance with rules contained in the regulations.
- (2) Regulations under subsection (1) may make different provision for different circumstances.

## **CHAPTER 7**

### **TAX CREDITS**

### **1109 Tax credits for certain recipients of exempt qualifying distributions**

- (1) This section applies if a company makes a qualifying distribution which is exempt for the purposes of Part 9A of CTA 2009 (company distributions).
- (2) If the person receiving the distribution is a UK resident company, that company is entitled to a tax credit equal to one-ninth of the amount or value of the distribution (but see subsection (5)).
- (3) If the distribution is, or is treated under any provision of the Tax Acts as, the income of a person ("P") other than the recipient ("R"), P (not R) is treated as receiving it for the purposes of subsection (2) (and so P (not R) is entitled to a tax credit if P falls within subsection (2)).
- (4) Section 1102(2) to (6) (power to obtain certain information from close companies and others) applies for the purposes of this section as it applies for the purposes of section 1101.
- (5) This section is subject to the following provisions—
  - (a) section 808 (no tax credits for borrower under stock lending arrangement),
  - (b) section 809 (no tax credits for lender under creditor repo or creditor quasi-repo),
  - (c) section 810 (no tax credits for borrower under debtor repo or debtor quasi-repo), and
  - (d) section 219(4B) of FA 1994 (no tax credit for distributions in respect of assets in Lloyd's member's premium trust fund).

### **1110 Recovery of overpaid tax credit etc**

- (1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).
- (2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.
- (3) The officer may make any assessment that in the officer's judgement is needed to recover—
  - (a) any corporation tax that should have been paid, or
  - (b) any payment of tax credit that should not have been made.
- (4) More generally, the officer may make any assessment that in the officer's judgement is needed to secure that the liabilities to corporation tax (and any liabilities to interest on corporation tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.
- (5) Subsection (6) applies if—
  - (a) interest on a payment of tax credit comprised in any franked investment income has been paid under section 826 of ICTA, and
  - (b) interest should not have been paid on the payment, or should only have been paid on part of it.
- (6) An officer of Revenue and Customs may make an assessment for recovering the interest, so far as it should not have been paid.

### **1111 Section 1110: supplementary**

- (1) If—
  - (a) an assessment is made under section 1110 to recover tax credit paid to a company in respect of franked investment income received in an accounting period, and
  - (b) more than one payment of tax credit was made in respect of that period,then as far as possible a sum recovered is treated as relating to a payment of tax credit made later rather than to one made earlier.
- (2) TMA 1970 applies to an assessment under section 1110 for recovering a payment of tax credit, or of interest on a tax credit—
  - (a) as if it were an assessment to corporation tax for the accounting period in respect of which the payment was claimed, and
  - (b) as if the payment represented a loss of tax to the Crown.
- (3) Any sum charged by an assessment such as is mentioned in subsection (2) is due within 14 days after the notice of assessment is issued.
- (4) The duty to comply with subsection (3) is subject to any appeal against the assessment.

## CHAPTER 8

### INTERPRETATION OF PART

#### 1112 Arrangements between companies

- (1) This section applies if two or more companies enter into arrangements to make distributions to each other's members.
- (2) For the purposes mentioned in subsection (3) all parties concerned (however many) may be treated as if anything done by any one of those companies had been done by any one of the others.
- (3) The purposes are those of this Part except sections 1054 to 1058 and 1064 to 1071.

#### 1113 “In respect of shares”

- (1) In this Part “in respect of shares in the company”, in relation to a company which is a member of a 90% group, means in respect of shares in—
  - (a) that company, or
  - (b) any other company in the group.
- (2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.
- (3) For the purposes of this Part a thing is regarded as done in respect of a share if it is done to a person—
  - (a) as the holder of the share, or
  - (b) as the person who held the share at a particular time.
- (4) For the purposes of this Part a thing is also regarded as done in respect of a share if it is done in pursuance of a right granted, or an offer made, in respect of a share.
- (5) Subsections (3) and (4) do not affect the meaning of “in respect of shares” in section 1054 (building society payments).
- (6) In this section “90% group” means a company and all its 90% subsidiaries.

#### 1114 “In respect of securities”

- (1) In this Part “in respect of securities of the company”, in relation to a company which is a member of a 90% group, means in respect of securities of—
  - (a) that company, or
  - (b) any other company in the group.
- (2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.
- (3) For the purposes of this Part, except where the context otherwise requires—
  - (a) interest paid by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is treated as if paid, or given, in respect of a security issued for the advance by the company.

- (4) For the purposes of this Part a thing is regarded as done in respect of a security if it is done to a person—
  - (a) as the holder of the security, or
  - (b) as the person who held the security at a particular time.
- (5) For the purposes of this Part a thing is also regarded as done in respect of a security if it is done in pursuance of a right granted, or an offer made, in respect of a security.
- (6) In this section “90% group” means a company and all its 90% subsidiaries.

### **1115 “New consideration”**

- (1) In this Part, unless the context otherwise requires—
  - (a) “new consideration” means consideration not provided (directly or indirectly) out of assets of the company, and
  - (b) in particular, “new consideration” does not include amounts retained by the company by way of capitalising a distribution.But paragraph (a) is subject to the other subsections of this section.

- (2) Subsection (3) applies if—
  - (a) share capital has been issued at a premium representing new consideration, and
  - (b) any part (“the applied part”) of that premium is afterwards applied in paying up share capital.
- (3) The applied part of the premium is also treated as new consideration for that share capital.

But the premium is not so treated so far as it has been taken into account under section 1025(2) so as to enable a distribution to be treated as a repayment of share capital.

- (4) The general rule is that no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, is to be treated for the purposes of this Part as new consideration.
- (5) The general rule in subsection (4) applies unless the consideration consists of—
  - (a) money or value received from the company as a qualifying distribution,
  - (b) money received from the company as a payment which for the purposes of this Part constitutes a repayment of the share capital in question, or of the principal secured by the security in question, or
  - (c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

This is subject to subsection (6).

- (6) No amount is regarded as new consideration by virtue of subsection (5)(b) or (c) so far as it exceeds—
  - (a) any new consideration received by the company for the issue of the share capital or security in question, or
  - (b) in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.

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*Status: This is the original version (as it was originally enacted).*

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### **1116 References to married persons, or civil partners, living together**

Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Part as living together unless—

- (a) they are separated under an order of a court of competent jurisdiction,
- (b) they are separated by a deed of separation, or
- (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

### **1117 Other interpretation**

- (1) In this Part, except where the context otherwise requires—
  - “security” includes securities not creating or evidencing a charge on assets, and
  - “share” includes stock, and any other interest of a member in a company.
- (2) Subsection (1) does not affect the meaning of “share” in section 1054 (building society payments).
- (3) For the purposes of this Part a distribution is treated as made out of assets of a company if the cost falls on the company.
- (4) For the purposes of this Part consideration is treated as provided out of assets of a company if the cost falls on the company.
- (5) References in this Part to issuing share capital as paid up also apply to the paying up of any issued share capital.
- (6) If securities—
  - (a) are issued at a price less than the amount repayable on them, and
  - (b) are not listed on a recognised stock exchange,then, for the purposes of this Part the principal secured is not taken to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.
- (7) For the purposes of this Part, if something done in respect of shares is done by reference to share holdings at a particular time, it is regarded as done—
  - (a) to the then holders of the shares, or
  - (b) to the personal representatives of any holder then dead.
- (8) For the purposes of this Part, if something done in respect of securities is done by reference to holdings of securities at a particular time, it is regarded as done—
  - (a) to the then holders of the securities, or
  - (b) to the personal representatives of any holder then dead.