



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART X

SCHEDULE F AND COMPANY DISTRIBUTIONS

Meaning of "distributio"n

233 Matters to be treated as distributions

- (1) The following provisions in this Part of this Act, together with sections 284 and 285 of this Act, shall subject to section 248(8) of this Act and to any other express exceptions, have effect with respect to the meaning in the Corporation Tax Acts of "distribution", and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding-up.
- (2) In relation to any company " distribution " means—
 - (a) any dividend paid by the company, including a capital dividend;
 - (b) any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration given for the distribution;
 - (c) any redeemable share capital or any security issued by the company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration ;
 - (d) any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured), where the securities are either—
 - (i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 ; or

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- (ii) securities convertible directly or indirectly into shares in the company and not securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted ; or
 - (iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it, or under which the consideration so given represents more than a reasonable commercial return for the use of that principal; or
 - (iv) securities issued by the company and held by a company not resident in the United Kingdom, where the former is a 75 per cent. subsidiary of the latter or both are 75 per cent. subsidiaries of a third company; or
 - (v) securities which are connected with shares in the company, where " connected with " means that in consequence of the nature of the rights attaching to the securities or shares, and in particular of any terms or conditions attaching to the right to transfer the shares or securities, 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 to acquire, a proportionate holding of the shares;
- (e) any such amount as is required to be treated as a distribution by subsection (3) below, or by section 234 below.
- (3) Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall be treated as making a distribution to him of an amount equal to the difference:
- Provided that, where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident, the said amount shall not be treated as a distribution.
- (4) The question whether one body corporate is a subsidiary of another for the purpose of subsection (3) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
 - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
 - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

234 Bonus issues following repayment of share capital

- (1) Where a company—
- (a) repays any share capital, or has done so at any time after 6th April 1965 ; and
 - (b) at or after the time of that repayment issues as paid up otherwise than by the receipt of new consideration any share capital, not being redeemable share capital;

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the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

(2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—

- (a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or
- (b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.

(3) In this section—

" ordinary shares " means shares other than preference shares;

" preference shares " means shares—

(a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, or fluctuates only with the standard rate of income tax, and

(b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on stock exchanges in the United Kingdom,

" new consideration not derived from ordinary shares " means new consideration other than consideration consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, and other than consideration derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

235 Matters to be treated or not treated as repayments of share capital

(1) Where—

- (a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965 ; and
- (b) any amount so paid up does not fall to be treated as a distribution;

then for the purposes of sections 233 and 234 above distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not falling to be treated as distributions.

(2) In subsection (1) above " relevant distribution " means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.

(3) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other

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shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

- (4) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Part of this Act whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital:

Provided that this subsection shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.

- (5) Subject to subsection (4) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

236 Stock dividend options

- (1) Any share capital, other than redeemable share capital, issued by a company in consequence of the exercise by any person of an option conferred on him on or after 19th March 1968 to receive in respect of shares in the company either a dividend in cash or additional share capital shall be treated as a distribution by the company, and the income tax chargeable in respect of it under Schedule F shall be tax on the sum on which tax would have been chargeable under Schedule F if the person in question had accepted the cash dividend instead.
- (2) For the purposes of sections 234(1) and 235(1) above share capital issued as mentioned in subsection (1) above shall not be treated as issued " as paid up otherwise than by the receipt of new consideration ".
- (3) For the purposes of this section an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person's abandonment of, or failure to exercise, such a right is to be treated for those purposes as an exercise of the option.

237 Distributions: supplemental

- (1) In this Part of this Act " new consideration " means consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution :

Provided that where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been taken into account under section 235(4) above so as to enable a distribution to be treated as a repayment of share capital.

- (2) A distribution shall be treated under this Part of this Act as made, or consideration as provided, out of assets of a company if the cost falls on the company.
- (3) In this Part of this Act " share " includes stock, and any other interest of a member in a company.
- (4) References in this Part of this Act to issuing share capital as paid up apply also to the paying up of any issued share capital.

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- (5) For purposes of this Part of this Act " security " includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.
- (6) Where securities are issued at a price less than the amount repayable on them, and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part of this Act to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.
- (7) For the purposes of this Part of this Act a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share ; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.