



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XI

COMPANY TAXATION

CHAPTER III

CLOSE COMPANIES

Charges to tax in respect of shortfall

289 Shortfall in distributions

- (1) If in any accounting period of a close company there is a shortfall in the company's distributions, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to the income tax for which the company would be liable to account under section 232(2) of this Act on a distribution equal in amount (before deduction of income tax) to the shortfall and made twelve months after the end of the accounting period (income tax having been deducted).
- (2) Tax assessed by virtue of subsection (1) above shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (3) Where a company is in respect of any year of assessment: assessed under this section in respect of a shortfall in distributions, and there is in that year a surplus of franked investment income (including any amount carried forward from an earlier year), the company may, by a claim made within two years from the end of that year of assessment, require that the shortfall shall be set off as far as may be against the surplus, and, in that event, the shortfall and the surplus shall each (as regards the company) be treated as reduced by the amount of the set-off; and the set-off shall, so far as it reduces the shortfall, be effected by discharge of the tax assessed under this section by reference to the shortfall.

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- (4) Effect shall be given to a claim under subsection (3) above in priority to any claim for the same year under section 254 or section 255 of this Act, but the set-off shall be made as far as may be against any part of the surplus which has been carried forward from an earlier year of assessment.
- (5) Where a company is assessed under this section in respect of a shortfall in distributions for any accounting period, then (so long as the company remains a close company) it may for any later accounting period for which there is no such shortfall make a claim within six years from the end of the later period requiring that the shortfall of the earlier period, or so much of it as has not been dealt with under this subsection, shall, in determining the income tax payable by the company in respect of distributions for the later period or, as the case may be, in arriving at any surplus of franked investment income, be deducted rateably from the distributions made by the company for the later period :
- Provided that no deduction shall be made under this subsection from the distributions for any accounting period so as to reduce those distributions below the required standard.
- (6) Subject to subsections (4) and (5) of section 294 below, the preceding provisions of this section shall, notwithstanding the winding up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (7) So much of section 247(8) of this Act (adjustments where true accounting period is established on appeal) as extends the time within which assessments may be made shall apply to assessments to tax under this section.

290 Determination of shortfall: required standard

- (1) For the purposes of section 289 above, the shortfall in a company's distributions for any accounting period is, subject to the following provisions of this section, the amount (if any) by which the distributions for the period fall short of the required standard; and subject to those provisions, the required standard is the distributable income for the period, less so much of that income (not exceeding, in the case of a company which is neither a trading company nor a member of a trading group, the amount of the estate or trading income) as the company shows could not be distributed without prejudice to the requirements of the company's business.
- (2) In no case shall the required standard exceed the company's distributable investment income for the period plus 60 per cent. of the estate or trading income for the period.
- (3) In arriving at the required standard for any accounting period—
- (a) regard shall be had not only to the current requirements of the company's business, but also to such other requirements as may be necessary or advisable for the maintenance and development of that business but, for this purpose, the provisions of section 293 below shall apply;
 - (b) the amount of the estate or trading income shall be taken at the amount included in respect of it in the distributable income.
- (4) Where a company is subject to any restriction imposed by law as regards the making of distributions, any shortfall in its distributions for an accounting period shall be disregarded to the extent to which the company could not make distributions up to the required standard without contravening that restriction.

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- (5) In the application of subsection (2) above to a trading company, the estate or trading income for an accounting period, if it is less than the relevant maximum amount shall be treated as reduced by one-fifth of the amount required to make it up to that relevant maximum amount or, if it is less than the relevant minimum amount, shall be disregarded.
- (6) The relevant maximum and minimum amounts referred to in subsection (5) above shall be determined as follows:—
- (a) where the company has no associated company in the accounting period, those amounts are £9,000 and £1,500 respectively;
 - (b) where the company has one or more associated companies in the accounting period, the relevant maximum amount is £9,000 divided by one plus the number of those associated companies and the relevant minimum amount is £1,500 divided by one plus the number of those associated companies.
- (7) In applying subsections (5) and (6) above to any accounting period of a trading company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded; and for the purposes of this section a company is to be treated as an "associated company" of another at a given time if at that time one of the two has control of the other or both are under the control of the same person or persons.
- (8) In determining how many associated companies a trading company has got in an accounting period or whether a trading company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.
- (9) For an accounting period of less than twelve months the relevant maximum and minimum amounts determined in accordance with subsection (6) above shall be proportionately reduced.
- (10) The provisions of this section have effect subject to section 294 below.

291 Distributions to be taken into account, and meaning of " distributable income "
etc.

- (1) For the purposes of the provisions of this Chapter relating to shortfalls in the distributions of a close company, the distributions for an accounting period shall be taken to consist of—
- (a) any dividends which are declared in respect of the period and are paid during the period or within eighteen months after it, and
 - (b) all distributions made in the period except dividends which, in relation to any previous period, would fall under paragraph (a) above:

Provided that, where a period of account is not an accounting period, dividends which, if it were an accounting period, would be treated under paragraph (a) above as distributions for that accounting period shall be apportioned to any accounting period or part of an accounting period falling within the period of account in proportion to the distributable income of each such period or part.

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- (2) For the purposes of the provisions referred to in subsection (1) above, the "distributable income" of a company for an accounting period shall be the amount of its distributable profits for the period exclusive of the part attributable to chargeable gains, and, for the purposes of this subsection—
- (a) the "distributable profits" of a company for an accounting period shall be the amount on which corporation tax falls finally to be borne, less the amount of that tax, but with additions equal to—
 - (i) any franked investment income, less the amount of any relief given against it under section 254 or section 255 of this Act, and
 - (ii) any group income,
 - (b) the part of a company's distributable profits attributable to chargeable gains shall be taken to be the amount of the chargeable gains on which corporation tax is finally borne less the amount of that tax, and
 - (c) the amount on which corporation tax falls finally to be borne (but not the amount of that tax) shall be computed as if section 254 of this Act did not include subsection (5) or subsection (6) of that section (and as if section 255 of this Act did not apply the said subsection (5)).
- (3) For the purposes of the provisions referred to in subsection (1) above, the "distributable investment income" of a company for an accounting period shall be the amount of the distributable income, exclusive of the part attributable to estate or trading income, and less whichever is the smaller of—
- (a) 10 per cent. of the estate or trading income, and
 - (b) £200 or, if the accounting period is of less than twelve months, a proportionately reduced amount.
- (4) For the purposes of this Chapter, the "estate or trading income" of a company means—
- (a) income which is not investment income for the purposes of section 292(1) below, and
 - (b) income which is chargeable to tax under Schedule A or Schedule B, and income (other than yearly or other interest) which is chargeable to tax under Schedule D, and which arises from the ownership or occupation of land (including any interest in or right over land) or from the letting furnished of any building or part of a building.
- (5) The amount for part of an accounting period of any description of income referred to in subsections (2) to (4) above shall be a proportionate part of the amount for the whole period, and, in determining the amount for any period of any description of income, any deduction from the company's profits for charges on income, expenses of management or other amounts deductible from profits of more than one description shall be treated as made from such profits, and in such proportions from those profits, as is appropriate.

292 Meaning of "trading company" and "member of a trading group"

- (1) For the purposes of this Chapter, a "trading company" is any company which exists wholly or mainly for the purpose of carrying on a trade, and any other company whose income does not consist wholly or mainly of investment income, that is to say, income, which, if the company were an individual, would not be earned income; but for this purpose any amount which is apportioned to a company under section 296 below shall be deemed to be income of the company and to be investment income.

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- (2) For the purposes of this Chapter, a company is to be treated as a " member of a trading group " if, but only if—
- (a) it exists wholly or mainly for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade, or
 - (b) it is under the control of another company resident in the United Kingdom and not itself under the control of a third company, and it exists wholly or mainly for the purpose of a trade or trades carried on by that other company or by a group which, consisting of that other company and a company or companies also under its control and resident in the United Kingdom, exists wholly or mainly for the purpose of carrying on the said trade or trades:

Provided that a company shall not be treated as a member of a trading group by reason of any company having the control of another if that control is exercised through a company which is not resident in the United Kingdom or through a company whose control depends on a holding a profit on the sale of which would be treated as a trading receipt of the company.

293 Requirements of the company's business

- (1) For the purposes of section 290(3) above there shall be regarded as income available for distribution and not as having been applied, or as being applicable, to the current requirements of a company's business, or to such other requirements as may be necessary or advisable for the maintenance and development of that business—
- (a) any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before 4th August 1914—
 - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company, or
 - (ii) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor, or
 - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property, or
 - (iv) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred otherwise than for adequate consideration, and
 - (b) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction, and
 - (c) in the case of a company which is neither a trading company nor a member of a trading group, any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.
- (2) For the purposes of subsection (1)(a)(iv) above, share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—

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- (a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon), or
- (b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in paragraph (a) of this subsection or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration;

and references in the preceding provisions of this section to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

294 Cessations and liquidations

- (1) For the purposes of sections 289 and 290 above, where a close company ceases to carry on the trade, or the business of holding investments, in which its activities wholly or mainly consisted, then, subject to subsection (2) below, but notwithstanding any other provision limiting the required standard of distributions, the required standard for any accounting period in which that event occurs, or which ends in or with the twelve months ending with that event, shall be calculated on the whole, instead of on 60 per cent. of the estate or trading income (if any) taken into account, and without any deduction in respect of the requirements of the business.
- (2) Where subsection (1) above applies for an accounting period and the company shows that it could not make distributions up to the required standard without prejudice to the claims of creditors (excluding those mentioned in subsection (3) below), then, for the purposes of section 289 above so much of the shortfall as the company shows could not be avoided without prejudice to those claims shall be disregarded.
- (3) The creditors to be excluded for the purposes of subsection (2) above are all participators and associates of participators, and all creditors in respect of debts originally created in favour of or due to a person who was then a participator or associate of a participator:

Provided that a creditor is not to be excluded in respect of any debt which either—

- (a) arose in the ordinary course of the company's trade or the company's business of holding investments and also in the ordinary course of a trade or profession of the creditor or, as the case may be, of the participator or associate who was the original creditor, or
 - (b) is a debt for remuneration chargeable to income tax under Schedule E, or
 - (c) is a debt for any rent or other payment due for the use of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), and not representing more than a reasonable commercial consideration for that use.
- (4) Where a resolution is passed, or an order is made, for the winding up of a close company, or where any other act is done for a like purpose in the case of a winding up otherwise than under the Companies Act 1948, subsections (1) to (3) above shall apply for any accounting period ending in or with the twelve months ending with the passing of the resolution or other event, or for any later accounting period, as they

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apply, in a case falling within subsection (1) above, for an accounting period in which a close company ceases to carry on a trade.

- (5) Where an event mentioned in subsection (4) above occurs, then any assessment on the company in respect of a shortfall—
- (a) for an accounting period ending in or with the twelve months ending with the said event shall be an assessment as for a distribution made immediately before that event,
 - (b) for any later accounting period shall be an assessment as for a distribution made immediately before the end of that period,
- and the amount due under the assessment shall be recoverable accordingly.

295 The shortfall charge: protection by transmission of accounts

- (1) A close company may, at any time after the general meeting at which the accounts for any period of account are adopted, forward to the inspector a copy of those accounts, together with a copy of the report (if any) of the directors for that period and such further information (if any) as it may think fit, and may request the inspector to proceed under this section in relation to any accounting period comprised in that period of account:

Provided that this subsection shall not apply if the company is neither a trading company nor a member of a trading group and has no estate or trading income.

- (2) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, then, subject to subsection (3) below, he shall, within three months after receipt of the request, intimate to the company whether or not he proposes to make an assessment on the company in respect of the accounting period under section 289 above.
- (3) On receiving a request made in accordance with subsection (1) above, the inspector may, not later than three months after the receipt of the request, call on the company to furnish him with such further particulars as he may reasonably require; and, if the inspector does so, the time for giving the intimation required by subsection (2) above shall not expire before three months after he has been furnished with those particulars.
- (4) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, and does not within the time limited by subsections (2) and (3) above intimate his intention to make an assessment in respect of the period, no such assessment shall be made unless either—
- (a) the information accompanying the request, and any further particulars furnished to the inspector in connection therewith, are not such as to make full and accurate disclosure of all facts and considerations which are material to be known to him, or
 - (b) within twelve months of the end of the period any of the provisions of section 294 above has effect in relation to the company.