



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XI

COMPANY TAXATION

CHAPTER III

CLOSE COMPANIES

Meaning of close company

282 Meaning of close company

- (1) For the purposes of the Corporation Tax Acts, a "close company" is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—
 - (a) to a company not resident in the United Kingdom, or
 - (b) to a registered industrial and provident society within the meaning of section 340(9) of this Act, or to a building society within the meaning of section 343 of this Act or any other company to which the said section 343 applies, or
 - (c) to a company controlled by or on behalf of the Crown, and not otherwise a close company, or
 - (d) to a company falling within subsection (4) or section 283 below.
- (2) Subject to subsection (4) and section 283 below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if, on the assumption that it is so, or on the assumption that it and any other such company or companies are so, more than half of any amount falling under this Chapter to be apportioned for the purposes of surtax in the case of the company could be apportioned among five or fewer participators, or among participators who are directors.
- (3) For the purposes of this section—

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- (a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and
 - (b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.
- (4) A company is not to be treated as a close company in any case where—
- (a) by reason of beneficial ownership of shares in the company, the control of it is in the hands of a company which is not a close company, or of two or more companies none of which is a close company, and
 - (b) it could only be treated as a close company as being under the control of five or fewer participators, and it cannot be so treated except by taking as one of the participators a company which is not a close company,
- but so that references in this subsection to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.

283 Certain companies with quoted shares not to be close companies

- (1) Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—
- (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and
 - (b) any such shares have within the preceding twelve months been the subject of dealings on a recognised stock exchange, and the shares have within those twelve months been quoted in the official list of a recognised stock exchange.
- (2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.
- (3) For the purposes of subsection (1) above, shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
- (a) fall within subsection (4) below, and
 - (b) are not within the exceptions in subsection (5) below,
- and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- (4) Shares fall within this subsection (as being beneficially held by the public)—
- (a) if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
 - (b) if held on trust for a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or
 - (c) if they are not comprised in a principal member's holding.
- (5) Shares shall not be deemed to be held by the public if they are held—
- (a) by any director or associate of a director of the company, or

- (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
- (c) by any associated company of the company, or
- (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 302 below (definition of " control"), be attributed to that person under subsection (5) of that section (nominees).

- (6) For the purposes of this section—
 - (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
 - (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 302 below (definition of " control "), would be attributed to him under subsection (5) or (6) of that section (nominees, controlled companies and associates).
- (8) In this section " share " includes " stock ".

Additional matters to be treated as distributions

284 Payments etc. to participators and associates

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, in the Corporation Tax Acts " distribution ", in relation to a close company, includes unless otherwise stated—
 - (a) any annuity or other annual payment paid by the company to a participator, other than interest,
 - (b) any rent, royalty or other consideration paid or given by the company to a participator for the use of property other than money or, in the case 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), so much of any such consideration as represents more than a reasonable commercial consideration, and
 - (c) any such amount as is required to be treated as a distribution by subsection (2) below.

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- (2) Where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator:

Provided that this subsection shall not apply to expense incurred in or in connection with the provision of benefits or facilities for a person to whom section 196 of this Act applies as a director or employee of the company, or the provision for the spouse, children or dependants of any such person of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.

- (3) Any reference in subsection (2) above to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter; and section 197 of this Act (valuation of benefits in kind) shall apply for the purposes of that subsection as it applies for the purposes of section 196 of this Act, references to that subsection being substituted for references to section 196(1), and references to a body corporate including any company.
- (4) Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
- (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and
 - (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.
- (5) The question whether one body corporate is a subsidiary of another for the purpose of subsection (4) 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.
- (6) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

- (7) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

285 Interest paid to directors and directors' associates

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, this section has effect where in any accounting period any interest is paid by a close company to, or to an associate of, a person—
 - (a) who is a director of the close company, or of any company which controls, or is controlled by, the close company, and
 - (b) who has a material interest—
 - (i) in the close company, or
 - (ii) where the close company is controlled by another company, in that other company.
- (2) If the total amount so paid to any person in the accounting period exceeds the limit imposed in his case, the excess shall be a distribution made by the close company to that person.
- (3) The limit shall be worked out in the first instance as an overall limit applying to the aggregate of all interest which is within subsection (1) above and which was paid by the close company in the accounting period, and, where there are two or more different recipients, that overall limit shall be apportioned between them according to the amounts of interest paid to them respectively.
- (4) The overall limit shall be a sum equal to interest at 8 per cent. per annum on whichever is the less of—
 - (a) the total of the loans, advances and credits on which the interest within subsection (1) above was paid by the close company in the accounting period, or if that total was different at different times in the accounting period, the average total over the accounting period, and
 - (b) the nominal amount of the issued share capital of the close company plus the amount of any share premium account (or other comparable account by whatever name called) of the company, taking both amounts as at the beginning of the accounting period.
- (5) In this section " interest" includes any other consideration paid or given by the close company for the use of money advanced, or credit given, by any person, and references to interest " paid " shall be construed accordingly.
- (6) This section has effect subject to section 284(6) above, and for the purposes of this section a person has a material interest in a company—
 - (a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without any such other associates, is the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent. of the ordinary share capital of the company, or
 - (b) if, on an amount equal to the whole distributable income of the company falling under this Chapter to be apportioned for the purposes of surtax, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

*Charges to tax in connection with loans and covenants***286 Loans to participators etc.**

- (1) Subject to the following provisions of this section, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, 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 income tax on the grossed up equivalent of the loan or advance.
- (2) For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—
 - (a) that person incurs a debt to the close company, or
 - (b) a debt due from that person to a third party is assigned to the close company, and then the close company shall be regarded as making a loan of an amount equal to the debt:

Provided that paragraph (a) above shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

- (3) This section shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, under a bona fide scheme for assisting the purchase of houses by members of the staff of the close company, or of any associated company of the close company, if—
 - (a) the loan is used for the purpose of purchasing a dwelling which is or will be the borrower's only or main residence, and
 - (b) neither the amount of the loan, nor that amount when taken with any other outstanding loans made for the same purpose, by the close company or any of its associated companies to the borrower, or to the wife or husband of the borrower, exceeds £10,000, and
 - (c) the borrower works full-time for the close company, or any of its associated companies, and
 - (d) the borrower does not have a material interest in the close company or in any associated company of the close company.
- (4) Tax assessed by virtue of this section shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (5) Where, after a company has paid the amount assessed on it under this section in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, the amount paid by the company, or a proportionate part of it, shall be repaid.

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the year of assessment in which the repayment is made.

- (6) For the purposes of this section and section 287 below, the grossed up equivalent of an amount is such a sum as, after deduction of income tax at the standard rate, is equal to that amount, and shall be computed by reference to the standard rate for the year of assessment in which the loan or advance is made or, as the case may be, the debt is wholly or partly released or written off.

- (7) Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—
- (a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and
 - (b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,
- then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income for the purposes of surtax of the participator or associate an amount not less than the grossed up equivalent of the loan or advance, this section shall apply as if the loan or advance had been made to him.
- (8) In subsections (1) and (7)(b) above, the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in the United Kingdom.
- (9) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company; and section 285(6) above shall apply for the purpose of determining whether a person has, for the purpose of subsection (3) above, a material interest in a company.

287 Effect of release, etc., of debt in respect of loan under s. 286

- (1) Subject to the following provisions of this section where a company is assessed or liable to be assessed under section 286 above in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, the person to whom it was made shall be treated for purposes of surtax as having then received an amount of income equal to the grossed up equivalent of the amount so released or written off.
- (2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative within the meaning of Part XV of this Act, the amount treated as received by him shall accordingly be, as regards surtax, included for the purposes of that Part in the aggregate income of the estate).
- (3) This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 451 of this Act (sums paid to settlor otherwise than as income), except in so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (5) of that section).
- (4) This section shall be construed as one with section 286 above.

288 Covenants by participators

- (1) Where, in respect of any payment made or consideration given by a company, any sum falls by virtue of section 34 of this Act (charge of surtax on consideration for certain restrictive covenants etc.) to be included in an individual's total income for the

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purposes of surtax, and, at the time when the payment is made or the consideration is given, the company is a close company and the individual is a participator in the company or an associate of a participator, 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 income tax on the sum falling to be included in the individual's income as aforesaid, at the standard rate for the year of assessment in which the payment is made or the consideration is given.

- (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 subsection (1) above would apply to any payment or consideration if the condition that the company is a close company and the individual a participator in it or an associate of a participator were satisfied at the time when the payment is made or the consideration is given, that subsection shall apply if either—
 - (a) at that time the individual holds or is about to hold an office or employment with the company and the condition is satisfied within two years afterwards, or
 - (b) at that time the individual holds or has held an office or employment with the company and the condition has been satisfied within two years previously.
- (4) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

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.
- (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.
- (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

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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.

- (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.
- (2) For the purposes of this Chapter, a company is to be treated as a " member of a trading group " if, but only if—

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

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

- (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.

Surtax apportionments

296 Apportionment for surtax of close company's income

- (1) Subject to the provisions of this section, the income of a close company for any accounting period may, for the purposes of surtax, be apportioned by the Board among the participators, and any amount apportioned to a close company, whether

originally or by one or more sub-apportionments under this provision, may be further apportioned among the participators in that company.

- (2) For the purposes of an apportionment under this section, there shall be added to the amount of the income to be apportioned any amounts which were deducted in respect of annual payments, not being interest, in arriving at the company's distributable income (as defined in section 291(2) above) for the accounting period and which, in the case of an individual, would not have been deductible or would have been treated as his income in computing his total income for surtax.
- (3) Subject to subsection (2) above and (in the case of non-trading companies) to section 298(2) below.—
 - (a) an apportionment shall not be made under this section of a company's income for an accounting period unless an assessment is made on the company under section 289 above in respect of a shortfall in its distributions for that period, and
 - (b) the amount apportioned shall be the amount of the shortfall taken into account in making that assessment (and for this purpose a set-off of a surplus of franked investment income under section 289(3) above shall not be taken as reducing the amount of the shortfall),and an assessment under the said section 289, when it becomes final and conclusive, shall also be final and conclusive for the purposes of this subsection.
- (4) Subject to subsection (5) below and (in the case of non-trading companies) to section 298 below, any apportionment under this section, including any sub-apportionment of an amount directly or indirectly apportioned to a company, shall be made according to the respective interests in the company in question of the participators.
- (5) In determining for the purposes of subsection (4) above the respective interests of the participators, the Board may if it seems proper to them to do so attribute to each participator an interest corresponding to his interest in the assets of the company available for distribution among the participators in the event of a winding up.
- (6) 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) Notice of an apportionment under this section shall be given by serving on the company a statement showing the total amount apportioned and, as the Board think fit, either the amount apportioned to each participator or the amount apportioned to each class of shares.
- (8) A company which is aggrieved by any notice of apportionment under this section shall be entitled to appeal to the Special Commissioners on giving notice to an officer of the Board within thirty days after the date of the notice; and subject to that an apportionment under this section shall be final and conclusive.
- (9) If a company fails or refuses, on being required to do so by the Board, to furnish a statement of its income for any accounting period apportionable under this section, or renders a statement with which the Board are not satisfied, the Board may make an estimate of that income to the best of their judgment.

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

- (10) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board under subsection (5) or subsection (9) above.

297 Consequences of apportionment under s. 296

- (1) Where an apportionment of income of a close company has been made under section 296 above, surtax shall be assessed and charged in respect of the sum so apportioned in accordance with the following provisions of this section.
- (2) Subject to subsection (4) below, and (in the case of non-trading companies) to section 298(3) below, the income apportioned to a participator in a company shall for the purposes of surtax form part of his total income, and subject to section 529 of this Act shall be deemed to be the highest part of that income and to have been received by him at the end of the accounting period to which the apportionment relates.
- (3) Any amount apportioned to the personal representatives of a deceased person shall be treated as included as regards surtax in the aggregate income of the estate for the purposes of Part XV of this Act.
- (4) No individual shall be charged to surtax by virtue of any apportionment unless the sum or, where there is a sub-apportionment, the aggregate sum on which he is so chargeable amounts either to £100 or more or to 5 per cent. or more of the amount apportioned.
- (5) Any surtax chargeable under this section in respect of the amount of the income of a close company apportioned to any participator shall be assessed upon that participator in the name of the company and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts relating to surtax assessments and the collection and recovery of surtax shall, with any necessary modification, apply to surtax assessments and to the collection and recovery of surtax charged under this section.
- (6) A notice of charge to surtax under this section shall in the first instance be served on the participator on whom the tax is assessed, and if the participator does not within twenty-eight days from the date of the notice elect to pay the tax, a notice of charge shall be served on the company, and the tax shall thereupon become payable by the company:

Provided that—

- (a) nothing in this subsection shall prejudice the right to recover from the company the surtax charged in respect of any participator who has elected as aforesaid but who fails to pay the tax by 1st January in the year next following the year of assessment or within twenty-eight days of the date on which he so elected, whichever is the later, and
- (b) where a notice of charge is served on a company and the tax thereupon becoming payable is not paid by the company before the expiry of three months from the date of service or before 2nd January in the year next following the year of assessment, whichever is the later, the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the participator on whom it was assessed.
- (7) Where, in consequence of a sub-apportionment, subsections (5) and (6) above apply in relation to a participator in a company other than the company whose income

is apportioned, references in those subsections to the company shall be taken as references to the company whose income is apportioned.

- (8) Where—
- (a) any undistributed income which has been assessed and charged to surtax under this section is subsequently distributed, and
 - (b) on the occasion of its distribution the distributions for the accounting period exceed the required standard,

a fraction of any amount to which an individual is entitled shall be deemed not to form part of his total income for the purposes of surtax; and the said fraction is

$$\frac{A}{B}$$

where—

A is the said excess, and

B is the whole distributions for the period.

- (9) Sections 34(1) and 37(1) (time limits for assessment) and section 33(1) (relief for error or mistake) of the Taxes Management Act 1970 shall apply in relation to surtax assessed under this section as if for references to six years there were substituted references to seven years.

298 Apportionment of income of non-trading companies

- (1) The provisions of this section and section 299 below apply in relation to a close company which is not a trading company, and in those provisions such a company is referred to as a " non-trading company ".
- (2) There may be apportioned under section 296 above, if the Board see reason for it, the whole of a non-trading company's income for an accounting period up to the amount of the required standard (notwithstanding that there has been no shortfall in distributions for that period), together with any addition to be made under subsection (2) of that section, but with such reduction, if any, as may be just in respect of distributions made for the period to persons other than participators and associates of participators :

Provided that for this purpose the required standard shall be treated as reduced by so much of any shortfall in the distributions for the period as would under section 290(4) above or, where subsection (1) of section 294 above applies, under subsection (2) of that section, be disregarded in an assessment made in respect of that shortfall.
- (3) Where an apportionment is made by virtue of subsection (2) above, an individual shall not be charged to surtax on an amount treated in consequence of the apportionment or any sub-apportionment as being his income except in so far as it exceeds the amount which, apart from the apportionment, falls in respect of distributions made by the company in the accounting period to be included in the statement of total income to be made by him for the purposes of surtax.
- (4) For the purposes of section 296(4) above, a loan creditor shall be deemed to have an interest in any company which is a non-trading company to the extent that the income to be apportioned, or assets representing it, has or have been expended or applied, or is or are available to be expended or applied, in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.

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- (5) In the case of a non-trading company where, by virtue or in consequence of any settlement, a loan creditor has been or could be required by some other person (in this subsection referred to as " the beneficiary ") to pay to the beneficiary the whole or a part of any sums which have been or might be paid to the loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole or a part of any sums or assets representing (directly or indirectly) any such sums, then—
- (a) if the requirement related, or could relate, to the whole of the sums or assets in question, the beneficiary and not the loan creditor shall be deemed for the purposes of section 296 above to be a participator in the company and, for the purposes of subsection (4) of that section, to have the interest in the company which the loan creditor would, but for this provision, be deemed to have in respect of that loan capital or debt; and
 - (b) in any other case, the beneficiary, as well as the loan creditor, shall be deemed to be a participator in the company for the purposes of section 296 above and, for the purposes of subsection (4) of that section, the interest which the loan creditor is deemed to have in the company in respect of that loan capital or debt shall be divided between them in such manner as the Board think fit.

In this subsection " settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

- (6) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under subsection (5) above.

299 Supplementary provisions as to apportionment of income of non-trading companies

- (1) If, in the case of a non-trading company, the Board are of opinion that any person who is not a participator in the company for the purposes of section 296 above is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, they may, if they think fit, treat him as a participator in the company for those purposes.
- (2) In apportioning the income of a non-trading company under section 296 above—
- (a) to any person who is treated as a participator in the company by virtue of subsection (1) above, or
 - (b) to any person who is a participator in the company but has no relevant interests in the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, or
 - (c) to any person who is a participator in the company and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company considered in relation to the value for those purposes of the relevant interests of other persons therein,

the Board may apportion to him such part of the income of the company as appears to them to be appropriate, and may adjust as they may consider necessary the apportionment of the remainder of the company's income.

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

- (3) Subsection (2) above applies to the sub-apportionment of an amount directly or indirectly apportioned to a non-trading company under section 296 above as it applies to an apportionment of the company's income.
- (4) For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able to do so by any means whatsoever, whether he has any rights at law or in equity in that behalf or not, and the Board may draw the inference that a person is likely to be able to secure that income or assets of a company will be applied for his benefit or, as the case may be, will be so applied to a greater extent than is represented in the value for apportionment purposes of any relevant interests which he has in the company, if and only if they are satisfied—
- (a) that he has, directly or indirectly, transferred assets to the company the value of which is not represented, or is not adequately represented, in the value for apportionment purposes of any relevant interests which he has in the company, and
 - (b) that the persons who, whether as directors or share holders or in any other capacity have, or will at any material time have, powers or rights affecting the disposal or application of the income or assets of the company are likely to act in accordance with his wishes, or that he is able to secure that persons who at the material times will have such powers or rights will be persons likely to act in accordance with his wishes.
- (5) Where the Board have, under subsection (2) above, apportioned income of a company for any accounting period, and the amount apportioned to any participator is less than the amount of income distributed to that participator by the company in respect of the said period in such manner that the amount distributed would, apart from this subsection, fall to be included in the statement of total income to be made by that participator for the purposes of surtax, the excess of the amount so distributed over the amount apportioned to that participator shall be deemed not to form part of the participator's total income for tax purposes:
- Provided that, where notice of appeal is given against the apportionment, the reference in this subsection to the amount apportioned to the participator shall be construed as a reference to the amount apportioned to him on the final determination of the appeal.
- (6) For the purposes of this section—
- (a) references to a person shall, in the case of an individual, be deemed to include the wife or husband of the individual,
 - (b) " assets " includes property or rights of any kind, and " transfer ", in relation to rights, includes the creation of those rights, and
 - (c) " relevant interests " means, in relation to a person connected in any way with a company, interests by reference to which income of the company could be apportioned to him under section 296 of this Act apart from this section, and " value for apportionment purposes " means, in relation to any relevant interests in any company, the value falling to be put thereon in apportioning the income of the company under the said section 296.
- (7) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

300 Apportionment of interest paid by certain non-trading companies

- (1) Subject to the provisions of this section, all interest paid by a close company in any accounting period shall be apportioned under section 296 above as if the interest were income of the close company for the accounting period.
- (2) Subsection (1) above shall not apply to a company—
 - (a) if it is a trading company, or
 - (b) if it is a member of a trading group, or
 - (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
 - (i) estate or trading income,
 - (ii) interest, and dividends or other distributions, received from a 51 per cent. subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.
- (3) Subsection (1) above shall not apply—
 - (a) to interest which would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if paid by an individual, or
 - (b) to interest which is money wholly and exclusively laid out or expended for the purposes of a trade carried on by the company.
- (4) If any amount of interest apportionable under subsection (1) above is interest paid to a participator in the close company, the amount apportionable to that participator by virtue of subsection (1) above shall be reduced by the first-mentioned amount (and without requiring the reduction to be reflected in the amount apportioned to any other person).
- (5) Section 296(3) above has effect subject to the provisions of this section, and an amount apportionable by virtue of this section shall be in addition to amounts (if any) apportionable under section 296 above without this section.
- (6) In determining under section 296 above and the provisions applying for the purposes of that section the person to whom any amount is to be apportionable by virtue of this section, any interest which any person possesses as a loan creditor shall be disregarded (but without prejudice to the making of an apportionment to him in any other capacity).
- (7) In determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
 - (a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, 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.

Information

301 Powers of Board and inspectors to obtain information

- (1) The Board may, by notice in writing, require any company which is, or appears to them to be, a close company to furnish them, within such time (not being less than twenty-eight days) as may be specified in the notice, with such particulars as they think necessary for the purposes of sections 296 to 300 above.
- (2) If for the purposes of those sections any person in whose name any shares are registered is so required by notice in writing by the Board, he shall state whether or not he is the beneficial owner of the shares and, if not the beneficial owner of the shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.
- (3) Subsection (2) above shall apply in relation to loan capital as it applies in relation to shares.
- (4) The Board may, for the purposes of the said sections, by notice in writing require—
 - (a) any company which appears to them to be a close company to furnish them with particulars of any bearer securities issued by the company, and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person, and
 - (b) any person to whom securities were issued as afore said, or to or through whom such securities were subsequently sold or transferred, to furnish them with such further information as they may require with a view to enabling them to ascertain the names and addresses of the persons beneficially interested in the securities.

In this subsection "securities " includes shares, stocks, bonds, debentures and debenture stock, and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor of the company.

- (5) Any power which the Board may exercise under this section for the purposes of sections 296 to 300 of this Act may be exercised by the inspector for the purposes of any of sections 286 to 295 of this Act.

General definitions

302 Meaning of " associated company " and " control "

- (1) For the purposes of this Chapter, other than section 290 above, a company is to be treated as another's " associated company " at a given time if, at that time or at any time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.
- (2) For the purposes of this Chapter, a person shall be taken to have control of a company—
 - (a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company, or

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- (b) if he possesses, or is entitled to acquire, either—
 - (i) the greater part of the issued share capital of the company, or
 - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed, or
 - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members, or
 - (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.
- (3) Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (2) above, they shall be taken to have control of the company.
- (4) In subsection (2) above " member " includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire ; and, for the purposes of paragraphs (b) (iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).
- (5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.
- (6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection ; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

303 Meaning of "participator", "associate", "director" and "loan creditor"

- (1) For the purposes of this Chapter, a " participator " is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
 - (b) any loan creditor of the company,
 - (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing " distributions " without regard to section 284 or section 285 of this Act) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption, and
 - (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

- (2) The provisions of subsection (1) above are without prejudice to any particular provision of this Chapter requiring a participator in one company to be treated as being also a participator in another company.
- (3) For the purposes of this Chapter " associate " means, in relation to a participator—
- (a) any relative or partner of the participator,
 - (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor (" settlement" and " settlor" having here the same meaning as in section 454(3) of this Act), and
 - (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein, and has a corresponding meaning in relation to a person other than a participator:

Provided that paragraph (c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

- (i) if the trust relates exclusively to a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or to a scheme the whole of which is an " excepted provident fund or staff assurance scheme or other similar scheme" as defined in section 224 of this Act, or
- (ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (ii) of this proviso, any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

- (4) In subsection (3) above " relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (5) For the purposes of this Chapter " director " includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—
- (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
 - (b) is remunerated out of the funds of that trade or business, and
 - (c) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.
- (6) In subsection (5)(c) above, the expression " either on his own or with one or more associates " requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own, and in paragraph (ii) of the proviso to subsection (3) above the expression " either on his own or with his relatives " has a corresponding meaning.
- (7) For the purposes of this Chapter " loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

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- (a) for any money borrowed or capital assets acquired by the company, or
- (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 (including any premium thereon),

or in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.