



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Close companies

103 Repeal of apportionment provisions

- (1) Except as provided by subsection (2) below, Chapter III of Part XI of the Taxes Act 1988 (apportionment of undistributed income etc. of close companies) shall not have effect in relation to accounting periods beginning after 31st March 1989.
- (2) Section 427(4) of the Taxes Act 1988 (which gives relief to an individual where income apportioned to him in an earlier accounting period of a close company is included in a distribution received by him in a later accounting period), and section 427(5) of, and Part I of Schedule 19 to, that Act so far as they relate to section 427(4), shall continue to have effect in any case where the subsequent distribution referred to in section 427(4) is made before 1st April 1992.

104 Meaning of “close company”

- (1) In section 414 of the Taxes Act 1988 for subsection (2) (further case in which a company is a close company for the purposes of the Tax Acts) there shall be substituted—
 - “(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a

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close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—

- (a) such rights as would, in the event of the winding-up of the company (“the relevant company”) on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
- (b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.

(2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—

- (a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and
- (b) any part of those assets which he would be entitled to receive if—
 - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound up on the basis set out in this subsection, and
 - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

(2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to “the relevant company” shall have effect as references to the company concerned.

(2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—

- (a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and
- (b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that section.”

(2) Subsection (3) of that section shall cease to have effect.

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- (3) In subsection (5)(b) of that section for the words from “paragraph (c)” to “that paragraph” there shall be substituted the words “paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs”.
- (4) This section shall be deemed to have come into force on 1st April 1989.

105 Small companies' rate not available to certain close companies

- (1) In section 13 of the Taxes Act 1988 (small companies' relief) in subsection (1) for the words “a company resident in the United Kingdom” there shall be substituted the words “a company which—
- (a) is resident in the United Kingdom, and
 - (b) is not a close investment-holding company (as defined in section 13A) at the end of that period.”.
- (2) After that section there shall be inserted the following section—

“13A Close investment-holding companies

- (1) A close company is for the purposes of section 13(1) a “close investment-holding company” unless it complies with subsection (2) below.
- (2) A company (“the relevant company”) complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—
- (a) the purpose of carrying on a trade or trades on a commercial basis,
 - (b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—
 - (i) any person connected with the relevant company, or
 - (ii) any person who is the wife or husband of an individual connected with the relevant company, or is a relative, or the wife or husband of a relative, of such an individual or of the husband or wife of such an individual,
 - (c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—
 - (i) is under the control of the relevant company or of a company which has control of the relevant company, and
 - (ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,
 - (d) the purpose of co-ordinating the administration of two or more qualifying companies,
 - (e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and
 - (f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.

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- (3) For the purposes of subsection (2) above, a company is a “qualifying company”, in relation to the relevant company, if it—
 - (a) is under the control of the relevant company or of a company which has control of the relevant company, and
 - (b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.
- (4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.
- (5) In this section—
 - “control” shall be construed in accordance with section 416, and
 - “relative” has the meaning given by section 839(8).
- (6) Section 839 shall apply for the purposes of this section.”
- (3) This section shall have effect in relation to accounting periods beginning after 31st March 1989.

106 Restriction on payment of tax credits.

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions) in subsection (3) after the words “made and” there shall be inserted the words “subject to subsections (3A) to (3D) below” and after that subsection there shall be inserted—
 - “(3A) Subject to subsection (3B) below, where it appears to the inspector that, in any accounting period of a company at the end of which it is a close investment-holding company—
 - (a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under subsection (3) above in respect of such an excess as is mentioned in that subsection, and
 - (b) by virtue of those arrangements, any eligible person—
 - (i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or
 - (ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,
- the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as appears to the inspector to be just and reasonable.

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(3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—

- (a) throughout the period, the company's ordinary share capital consisted of only one class of shares, and
- (b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

“arrangements” means arrangements of any kind whether in writing or not,

“close investment-holding company” has the meaning given by section 13A, and

“eligible person”, in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.”

- (2) This section shall have effect in relation to distributions made by companies in accounting periods beginning after 31st March 1989.

107 Close companies: consequential amendments

Schedule 12 to this Act (in which Part I contains administrative provisions relating to close companies and Part II makes amendments connected with section 103 above) shall have effect.