

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 23: Company distributions

Chapter 3: Matters which are not distributions

Section 1029: Overview of Chapter

3042. This section sets out the scope of the Chapter. It is new.
3043. The section refers to paragraph 6 of Schedule 12 to FA 1988. This Schedule is about change of status of building societies. It was decided to keep this material together rather than take out one small part. The Schedule has, therefore, not been rewritten.

Section 1030: Distribution in respect of share capital in a winding up

3044. This section excludes distributions made in a winding up from the scope of distributions for the purposes of the Corporation Tax Acts. It is based on section 209(1) of ICTA.

Section 1031: Distribution as part of a cross-border merger

3045. This section ensures that certain distributions made in the course of a cross-border merger are not treated as distributions for the purposes of the Corporation Tax Acts. It is based on section 209(1A) of ICTA.
3046. Provided certain conditions are met, if a company makes a distribution as part of a cross-border merger and then ceases to exist without being formally wound up, that distribution is not treated as a distribution.

Section 1032: Interest etc paid in respect of certain securities

3047. This section qualifies paragraph F in section 1000. It is based on section 212(1) and (3) of ICTA.
3048. The section excludes from the meaning of a distribution amounts paid to companies within the charge to corporation tax, but not if the distribution falls within the rules for non-commercial securities in paragraph E in section 1000.
3049. [Schedule 2](#) contains savings for certain obligations entered into before 9 March 1982, or entered into before 1 July 1982 as a result of negotiations that were in progress before 9 March 1982.

Section 1033: Purchase by unquoted trading company of own shares

3050. This section sets out the conditions that must apply so that the purchase by an unquoted trading company of its own shares is not treated as a distribution for the purposes of the Corporation Tax Acts. It is based on sections 219 and 229(3) of ICTA.

3051. The consideration for the purchase of own shares potentially falls into the computation of a chargeable gain in the hands of the seller, subject to any necessary matters to be taken into account under the chargeable gains legislation. This was confirmed by the judgement in the Court of Appeal in *Strand Options and Futures Ltd v Vojak* [2004] STC 64.

3052. This section is supplemented by sections 1034 to 1048.

Section 1034: Requirements as to residence

3053. This section sets out requirements relating to the residence and ordinary residence (for tax purposes) of the seller, and includes cases where the shares are held through a nominee or by a personal representative. It is based on section 220(1), (3) and (4) of ICTA.

Section 1035: Requirement as to period of ownership

3054. This section sets a minimum period throughout which the shares disposed of must have been held, and contains rules to determine, in certain circumstances, when those shares were acquired. It is based on section 220(5), (8) and (9) of ICTA.

Section 1036: Determining the period of ownership

3055. This section deems the seller to own the shares in certain periods. It is based on section 220 (6) and (7) of ICTA.

3056. Subject to certain conditions, periods of ownership by a spouse or civil partner of the seller, or by a person whose shares are transferred to the seller under a will or intestacy, are treated as periods of ownership by the seller.

3057. The definition in section 1011 of ITA relating to married persons or civil partners living together applies for the purposes of the Income Tax Acts, which in turn include corporation tax provisions which relate to income tax. The purchase of own share rules fall within that scope. The definition of persons “living together” has been provided in this legislation to avoid the need to refer to section 1011 of ITA - see section 1116.

Section 1037: Requirement as to reduction of seller’s interest as shareholder

3058. This section is the first of two that place conditions on the seller’s interest in the company after the purchase by the company of its own shares. It is based on section 221(1), (2), (3) and (4) of ICTA.

3059. The seller’s shareholding in the company must be reduced to no more than 75% of what it was before the company’s purchase of its own shares took place. For this purpose, the shareholdings of the seller and any shareholdings of the seller’s associates are looked at as one. The meaning of “associate” is provided by sections 1059 to 1061.

3060. The section is qualified generally by sections 1038 and 1043, and by sections 1039 to 1042 if the company making the purchase is a member of a group.

Section 1038: Section 1037: effect of entitlement to profits

3061. This section sets out the second condition concerning the seller’s interest in the company after the purchase of its own shares. It is based on section 221(5), (6), (7) and (8) of ICTA.

3062. The seller’s entitlement to the profits of the company after the purchase must be no more than 75% of what it was before the purchase. There are further requirements in section 1039 where the company is a member of a group.

Section 1039: Requirements where purchasing company is a member of a group

3063. This section supplements the requirements of sections 1037 and 1038 where the company is a member of a group. It is based on section 222(1) and (3) of ICTA.
3064. The seller's shareholding in all companies in the group must be substantially reduced after the purchase of own shares, taking into account any shares in the group held by any of the seller's associates – even if the seller holds no shares in the company making the purchase after the purchase has taken place.
3065. There are further qualifications in sections 1040 and 1043.

Section 1040: Determining whether interests as shareholders in a group are substantially reduced

3066. This section sets out how to determine whether the seller's shareholding in the purchaser's group is substantially reduced. It is based on section 222(2), (4), (5) and (6) of ICTA.
3067. The seller's shareholding in the group, taken together with any shareholdings of the seller's associates, must be no greater than 75% of what it was before the purchase of own shares took place.

Section 1041: Section 1040: effect of entitlement to profits

3068. This section stipulates that the seller's entitlement to the profits of the group must be no greater than 75% of what it was before the purchase of shares took place. It is based on section 222(7) and (8) of ICTA.

Section 1042: Other requirements

3069. This section places certain further requirements on the seller and on the transaction. It is based on section 223 of ICTA.
3070. The definition of “connected” for this purpose is in section 1062.

Section 1043: Relaxation of requirements in certain cases

3071. This section treats the seller as meeting the necessary conditions if the seller agreed to the purchase in order to permit an associate's shareholding to be substantially reduced. It is based on section 224 of ICTA.

Section 1044: Advance clearance of payments by Commissioners

3072. This section permits the company to apply to the Commissioners for HMRC for a decision whether or not section 1033 applies in respect of a particular purchase of own shares. It is based on section 225(1) of ICTA.
3073. The words “the Commissioners for Her Majesty's Revenue and Customs” have been substituted for the words “the Board” in the source legislation. This gives effect to section 50(1) and (2) of CRCA which requires references to the terms in the source legislation to be taken as references to the substituted terms.

Section 1045: Advance clearance: supplementary

3074. This section sets out time limits and further procedural rules in relation to the consideration of an application under section 1044. It is based on section 225(2) to (5) of ICTA.

Section 1046: Information and returns

3075. This section requires a company to make a return of a payment that it considers is within section 1033. It also provides for a company or any person connected with it to provide information about schemes or arrangements in relation to payments treated as falling within that section and for certain information to be provided where a payment falling within that section is received on behalf of another person. It is based on section 226(1), (2) and (4) of ICTA.

Section 1047: Meaning of “group” and “51% subsidiary” in sections 1033 to 1047

3076. This section widens the general meaning of “group” and “51% subsidiary” for the purpose of the purchase of own share rules. It is based on section 222(9) to (12) of ICTA.

Section 1048: Sections 1033 to 1047: other interpretation

3077. This section contains definitions. It is based on section 229 of ICTA.
3078. The term “personal representatives” (used in *subsection (3)*) is defined for all purposes of this Act in section 1119.
3079. The reference to “trading activities” in the source is omitted as that term is not used in this part of the legislation.

Section 1049: Stock dividends

3080. This section sets out the treatment of a dividend taken in shares instead of cash, and an issue of bonus shares derived from rights attaching to those shares. It is based on sections 230 and 249 of ICTA.
3081. If the value of the shares is charged to tax as income of the recipient under ITTOIA, the issue of those shares is not treated as a distribution.
3082. The section is supplemented by sections 1050 and 1051, and there are special rules in Schedule 2 for share capital issued before 6 April 1975.
3083. Section 249(3) of ICTA is not rewritten as it is no longer needed. It introduces specific rules for income tax where two or more persons are entitled to the share capital that has been issued and provides how those rules are applied in such a case. This provision is already made for income tax by section 413(5) of ITTOIA, for the purposes of the rules in Chapter 5 of Part 4 of that Act, and has no effect for corporation tax.
3084. [Schedule 1](#) contains consequential amendments to the provisions of ITTOIA that deal with the income tax provisions for stock dividends.

Section 1050: Application of section 1049 where bonus share capital is converted etc

3085. This section sets out the tax treatment of the shares issued in an exchange or conversion of shares that were themselves bonus shares taxed as a stock dividend. It is based on section 249(9) of ICTA.
3086. If the stock dividend was taxed as income then the issue of the replacement shares:
- is not taxed as a stock dividend,
 - is not treated as a distribution, and
 - is not regarded as issued for new consideration – *subsection (5)*.
3087. Some bonus issues do not fall within the rules of the provisions that section 1049 rewrites, either because they were issued before the original rule was introduced (section 34 of the F(No 2)A 1975) or because the rights to the bonus issue were

contained in shares issued before 6 April 1975 (the transitional rule in section 249(8) of ICTA, rewritten as paragraph 78A of Schedule 2 to ITTOIA).

3088. If this is the case, section 1049 does not apply to the replacement shares. Therefore, the issue of those shares is treated as a distribution and they are not treated as issued for new consideration – see *subsection (3)*.

Section 1051: “Bonus share capital” and “in lieu of a cash dividend”

3089. This section provides interpretation for the stock dividend rules. It is based on sections 249(1) and 251(1) of ICTA.

Section 1052: Share capital to which section 1049 applies: returns

3090. This section makes provision for certain returns to be made in relation to stock dividends. It is based on section 250(1), (3), (4), (5) and (6) of ICTA.

Section 1053: Return periods

3091. This section sets out the return periods for the purposes of section 1052. It is based on section 250(2) of ICTA.

Section 1054: Building society payments

3092. This section ensures that interest or dividends paid in respect of accounts held with a building society are not treated as distributions for corporation tax purposes. It is based on section 477A(3)(b) and (9) of ICTA.
3093. Such payments are charged to income tax as interest by section 372 of ITTOIA, and to corporation tax by section 498 of CTA 2009.

Section 1055: Industrial and provident societies: interest and share dividends

3094. This section states that payments made to members by an industrial or provident society in the form of a share of profits – for example the traditional “divi” from the Co-op – is not treated as a distribution for corporation tax purposes. It is based on section 486(1) and (12) of ICTA.
3095. Such payments are charged to income tax as interest by section 379 of ITTOIA, and to corporation tax, as interest under a loan relationship, by section 499 of CTA 2009.

Section 1056: Dividend or bonus relating to transactions

3096. This section ensures that any payment made by an industrial and provident society that is deductible for corporation tax by virtue of section 132 of CTA 2009 is not treated as a distribution. It is based on section 230A of ICTA.

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

3097. This section provides the same treatment for payments made to members in the case of UK agricultural or fishing co-operatives as section 1055 provides for an industrial and provident society. It is based on section 486(1), (9) and (12) of ICTA.

Section 1058: Meaning of “UK agricultural or fishing co-operative”

3098. This section provides definitions for the purpose of section 1057. It is based on section 486(9) and (12) of ICTA.
3099. The reference in section 486(12) of ICTA to “the Department for Agriculture for Northern Ireland” is rewritten in *subsection (4)* as “the Department of Agriculture and Rural Development”, its current title.

Section 1059: Associated persons

3100. This section contains the basic definition of “associate” for the provisions contained in Chapter 3. It is based on section 227(1), (2), (3), (4) and (7) of ICTA. As for section 1036 the definition of persons “living together” has been brought directly into the legislation – see section 1116.
3101. Further rules in sections 1060 and 1061 extend the meaning in the case of trustees and personal representatives.

Section 1060: Associated persons: trustees

3102. This section supplements the definition of “associate” in section 1059. It is based on section 227(5), (8) and (9) of ICTA.

Section 1061: Associated persons: personal representatives

3103. This section also supplements the definition of “associate” in section 1059. It is based on section 227(6) and (9) of ICTA.
3104. The term “personal representatives” is defined for all purposes of this Act in section 1119.

Section 1062: Connected persons

3105. This section sets out rules for identifying a “connected person” for the purposes of Chapter 3. It is based on section 228(1) to (5) of ICTA.
3106. These rules are supplemented by section 1063.

Section 1063: Section 1062: supplementary

3107. This section supplements the definitions in section 1062. It is based on section 228(6), (7) and (8) of ICTA.