



Corporation Tax Act 2010

2010 CHAPTER 4

PART 10

CLOSE COMPANIES

CHAPTER 2

BASIC DEFINITIONS

Meaning of “close company”: general

439 “Close company”

- (1) For the purposes of the Corporation Tax Acts, a “close company” is a company in relation to which condition A or B is met.
- (2) Condition A is that the company is under the control—
 - (a) of 5 or fewer participators, or
 - (b) of participators who are directors.
- (3) Condition B is that 5 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 section 440, 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 there were disregarded 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).
- (4) For exceptions to this section, see sections 442 to 447 (companies which are not to be close companies).

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- (5) Section 451 (section 450: rights to be attributed etc) applies for the purposes of subsection (3) and section 440 as it applies for the purposes of section 450.
- (6) See also section 441 (treatment of some persons as participators or directors for the purposes of subsection (3)).
- (7) For the meaning of—
 - (a) “control”, see sections 450 and 451,
 - (b) “director”, see section 452, and
 - (c) “loan creditor”, see section 453.

440 Basis of winding up under section 439(3)

- (1) This section applies for the purposes of section 439(3).
- (2) 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 the person would be entitled to receive in the event of the winding up of the relevant company, and
 - (b) any part of those assets which the person 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 section, 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.
- (3) In the application of subsection (2)—
 - (a) to the notional winding up of the other company mentioned in paragraph (b) of that subsection, and
 - (b) to any further notional winding up required by that paragraph (or by any further application of that paragraph),
 references to “the relevant company” are to be read as references to the company concerned.

441 Treatment of some persons as participators or directors for the purposes of section 439(3)

- (1) The following provisions apply for the purpose of determining whether under subsection (3) of section 439 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.
- (2) A person is to be treated as a participator in or director of the relevant company if the person 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 section 440.

- (3) No account is to 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.
- (4) But subsection (3) does not apply for the purposes of section 440.

Companies which are not to be close companies

442 Particular types of company

A company is not to be treated as a close company if—

- (a) it is non-UK resident,
- (b) it is a registered industrial and provident society, or
- (c) it is a building society.

443 Companies controlled by or on behalf of Crown

- (1) A company is not to be treated as a close company as a result of section 439(2) if it is controlled by or on behalf of the Crown.
- (2) A company is “controlled by or on behalf of the Crown”, for the purposes of this section, if it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person.
- (3) But a company is not controlled by or on behalf of the Crown, for the purposes of this section, if it is a close company as a result of being under the control of persons acting independently of the Crown.

444 Companies involved with non-close companies

- (1) A company is not to be treated as a close company if condition A or B is met.
- (2) Condition A is that the company—
 - (a) is controlled by one or more companies none of which is a close company, and
 - (b) cannot be treated as a close company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a company which is not a close company.
- (3) Condition B is that the company—
 - (a) would not be a close company were it not for paragraph (a) of section 439(3) or paragraph (d) of section 450(3), and
 - (b) would not be a close company if the references in those paragraphs to participators did not include loan creditors which are companies other than close companies.
- (4) References in subsections (2) and (3) to a close company include a company which, if UK resident, would be a close company.

445 Section 444: registered pension schemes

- (1) If shares in a company (“C”) are held on trust for a registered pension scheme, the persons holding the shares are to be treated, for the purposes of section 444(2) and (3)—

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- (a) as the beneficial owners of the shares, and
 - (b) in that capacity, as a company which is not a close company.
- (2) But subsection (1) does not apply if the scheme is established wholly or mainly for the benefit of—
- (a) directors, employees, past directors or past employees of a company within subsection (3), or
 - (b) dependants of an individual within paragraph (a).
- (3) The companies within this subsection are—
- (a) C,
 - (b) an associated company of C,
 - (c) a company which is under the control of—
 - (i) a director of C,
 - (ii) an associate of a director of C, or
 - (iii) two or more persons each of whom is such a director or associate, and
 - (d) a close company.
- (4) For the meaning of—
- (a) “associate”, see section 448, and
 - (b) “associated company”, see section 449.

446 Particular types of quoted company

- (1) A company is not to be treated as a close company at a particular time if—
- (a) shares in the company carrying at least 35% of the voting power in the company 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 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been listed on such an exchange.
- (2) But subsection (1) does 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%.
- (3) For the purposes of this section, a person is a principal member of a company if the person possesses a percentage of the voting power in the company of more than 5% (but see subsection (4)).
- (4) If there are more than 5 persons within subsection (3), a person is a principal member of the company only if—
- (a) the person is one of the 5 persons who possess the greatest percentages, or
 - (b) in a case where there are no such 5 persons because two or more persons possess equal percentages of the voting power in the company, the person is one of the 6 or more persons (including those two or more who possess equal percentages) who possess the greatest percentages.
- (5) In determining for the purposes of this section the voting power which a person possesses, there is to be attributed to the person any voting power which would be attributed to the person if section 451(3) to (6) applied for the purposes of this section.

- (6) In this section “shares”—
 - (a) include stock, but
 - (b) do not include shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits.
- (7) See also section 447 (section 446: meaning of “shares held beneficially by the public” etc).

447 Section 446: meaning of “shares beneficially held by the public” etc

- (1) For the purposes of section 446, shares in a company (C) are beneficially held by the public if they are—
 - (a) beneficially held by a UK resident company which is not a close company, or by a non-UK resident company which would not be a close company if it were UK resident,
 - (b) held on trust for a registered pension scheme, or
 - (c) not comprised in a principal member’s holding.
- (2) But shares are not beneficially held by the public if they are held—
 - (a) by a director of C,
 - (b) by an associate of such a director,
 - (c) by a company which is under the control of one or more persons each of whom is such a director or associate,
 - (d) by an associated company of C, or
 - (e) as part of a fund the capital or income of which is applicable or applied wholly or mainly for the benefit of any of individuals within subsection (3).
- (3) Those individuals are—
 - (a) employees, directors, past employees or past directors of C or of any company within subsection (2)(c) or (d), and
 - (b) dependants of any individuals within paragraph (a).
- (4) The reference in section 446(1) to shares which have been allotted unconditionally to, or acquired unconditionally by, the public is to be read in accordance with subsections (1) to (3).
- (5) For the purposes of subsection (1), a principal member’s holding consists of the shares which carry the voting power possessed by him.
- (6) The reference in subsection (2) to shares held by any person includes shares the rights or powers attached to which would be attributed to the person if section 451(3) applied for the purposes of that subsection.
- (7) Subsections (3) to (5) of section 446 (meaning of “principal member” and determination of voting power possessed) apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section, “shares” includes stock.

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Meaning of other expressions in this Part

448 “Associate”

- (1) In this Part “associate”, in relation to a person (“P”), means—
- (a) any relative or partner of P,
 - (b) the trustees of any settlement in relation to which P is a settlor,
 - (c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor,
 - (d) if P has an interest in any shares or obligations of a company which are subject to any trust, the trustees of any settlement concerned,
 - (e) if P—
 - (i) is a company, and
 - (ii) has an interest in any shares or obligations of a company which are subject to any trust,
 any other company which has an interest in those shares or obligations,
 - (f) if P has an interest in any shares or obligations of a company which are part of the estate of a deceased person, the personal representatives of the deceased, or
 - (g) if P—
 - (i) is a company, and
 - (ii) has an interest in any shares or obligations of a company which are part of the estate of a deceased person,
 any other company which has an interest in those shares or obligations.
- (2) In this section, “relative” means—
- (a) a spouse or civil partner,
 - (b) a parent or remoter forebear,
 - (c) a child or remoter issue, or
 - (d) a brother or sister.

449 “Associated company”

For the purposes of this Part, a company is another’s “associated company” at a particular time if, at that time or at any other time within the preceding 12 months—

- (a) one of them has control of the other, or
- (b) both are under the control of the same person or persons.

450 “Control”

- (1) This section applies for the purpose of this Part.
- (2) A person (“P”) is treated as having control of a company (“C”) if P—
- (a) exercises,
 - (b) is able to exercise, or
 - (c) is entitled to acquire,
- direct or indirect control over C’s affairs.
- (3) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
- (a) the greater part of the share capital or issued share capital of C,

- (b) the greater part of the voting power in C,
 - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
 - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.
- (4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).
- (5) If two or more persons together satisfy any of the conditions in subsections (2) and (3), they are treated as having control of C.
- (6) See also section 451 (section 450: rights to be attributed etc).

451 Section 450: rights to be attributed etc

- (1) This section applies for the purposes of section 450.
- (2) A person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
 - (b) will at a future date be entitled to acquire.
- (3) If a person—
- (a) possesses any rights or powers on behalf of another person (A), or
 - (b) may be required to exercise any rights or powers on A's direction or behalf, those rights or powers are to be attributed to A.
- (4) There may also be attributed to a person all the rights and powers—
- (a) of any company of which the person has, or the person and associates of the person have, control,
 - (b) of any two or more companies within paragraph (a),
 - (c) of any associate of the person, or
 - (d) of any two or more associates of the person.
- (5) The rights and powers which may be attributed under subsection (4)—
- (a) include those attributed to a company or associate under subsection (3), but
 - (b) do not include those attributed to an associate under subsection (4).
- (6) Such attributions are to be made under subsection (4) as will result in a company being treated as under the control of 5 or fewer participators if it can be so treated.

452 “Director”

- (1) In this Part, “director”, in relation to a company, includes—
- (a) a person occupying the position of director of the company, by whatever name called,
 - (b) a person in accordance with whose directions or instructions the directors of the company are accustomed to act, and
 - (c) a person within subsection (2).
- (2) A person (P) is within this subsection if P—

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- (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
- (b) is—
 - (i) the beneficial owner of, or
 - (ii) directly or indirectly able to control,
 at least 20% of the ordinary share capital of the company.
- (3) For the purposes of subsection (2)(b), P is treated as owning or controlling (as the case may be) what any associate of P owns or controls.

453 “Loan creditor”

- (1) For the purposes of this Part, “loan creditor”, in relation to a company, means a creditor—
 - (a) in respect of any debt within subsection (2), or
 - (b) in respect of any redeemable loan capital issued by the company.
 But this is subject to subsection (4).
- (2) Debt is within this subsection if it is incurred by the company—
 - (a) for any money borrowed or capital assets acquired by the company,
 - (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 on the debt).
- (3) A person who—
 - (a) is not the creditor in respect of any debt or loan capital to which subsection (1) applies, but
 - (b) has a beneficial interest in that debt or loan capital,
 is, to the extent of that interest, treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital (but this is subject to subsection (4)).
- (4) A person carrying on a business of banking is not treated as a loan creditor in respect of any debt or loan capital incurred or issued by the company for money lent by the person to the company in the ordinary course of that business.
- (5) See also section 519(2) of CTA 2009 (bond-holder under investment bond arrangements is loan creditor in respect of bond-issuer).

454 “Participator”

- (1) For the purposes of this Part, “participator”, in relation to a company, means a person having a share or interest in the capital or income of the company.
- (2) In particular, “participator” includes—
 - (a) a person who possesses, or is entitled to acquire, share capital or voting rights in the company,
 - (b) a loan creditor of the company,
 - (c) a person who possesses a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,

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- (d) a person who is entitled to acquire such a right as is mentioned in paragraph (c), and
 - (e) a person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit.
- (3) For the purposes of subsection (2), a person is treated as entitled to do anything which the person—
- (a) is entitled to do at a future date, or
 - (b) will at a future date be entitled to do.
- (4) In subsection (2) “distribution” is to be construed without regard to section 1000(2) (extended definition of distribution for close companies).
- (5) See also section 519(2) of CTA 2009 (investment bond arrangements to be ignored in the application of subsection (2)(e)).
- (6) This section does not affect any provision of this Part requiring a participator in one company to be treated as being also a participator in another company.