



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 15

#### TRANSACTIONS IN SECURITIES

*Circumstances in which corporation tax advantages obtained or obtainable*

#### **F1 735 Abnormal dividends used for exemptions or reliefs (circumstance A)**

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#### **Textual Amendments**

**F1** S. 735 omitted (with effect in accordance with Sch. 12 para. 15(3) of the amending Act) by virtue of Finance Act 2010 (c. 13), **Sch. 12 para. 10**

#### **736 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)**

- (1) This section applies in relation to a company (“A”) if subsections (2) to (4) apply.
- (2) A receives consideration which—
  - (a) is or represents the value of—
    - (i) assets which are available for distribution by a company by way of dividend, or
    - (ii) assets which would have been so available apart from anything done by the company,
  - (b) is received in respect of future receipts of a company, or
  - (c) is or represents the value of trading stock of a company.
- (3) The receipt is in consequence of a transaction whereby another person subsequently receives, or has received, an abnormal amount by way of dividend (see section 740).

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- (4) The receipt of the consideration is such that A does not pay or bear corporation tax on income in respect of it (apart from this Part).
- (5) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

**737 Receipt of consideration in connection with relevant company distribution (circumstance D)**

- (1) This section applies in relation to a company (“the section 733 company”) if subsections (2) to (4) apply.
- (2) The section 733 company receives consideration in connection with—
  - (a) the distribution, transfer or realisation of assets of a relevant company (see section 739), or
  - (b) the application of such assets in discharge of liabilities.
- (3) The consideration—
  - (a) is or represents the value of—
    - (i) assets which are available for distribution by way of dividend by the relevant company, or
    - (ii) assets which would have been so available apart from anything done by the relevant company,
  - (b) is received in respect of future receipts of the relevant company, or
  - (c) is or represents the value of trading stock of the relevant company.
- (4) The section 733 company so receives the consideration that it does not pay or bear corporation tax on income in respect of it (apart from this Part).
- (5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the relevant company is incorporated assets of that description are available for distribution by way of dividend.
- (6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

**738 Receipt of assets of relevant company (circumstance E)**

- (1) This section applies in relation to a company (“the section 733 company”) if subsections (2) to (4) and (7) apply.
- (2) The section 733 company receives consideration in connection with—
  - (a) the direct or indirect transfer of assets of a relevant company (see section 739) to another such company, or
  - (b) any transaction in securities in which two or more relevant companies are concerned.

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- (3) The consideration is or represents the value of assets which—
  - (a) are available for distribution by way of dividend by a relevant company,
  - (b) would have been so available apart from anything done by the relevant company, or
  - (c) are trading stock of a relevant company.
- (4) The consideration consists of any share capital or any security issued by a relevant company.
- (5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).
- (6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the relevant company.
- (7) The section 733 company does not pay or bear corporation tax on income in respect of the consideration (apart from this Part).
- (8) In this section—
  - (a) references to the receipt of consideration include references to the receipt of any money or money's worth,
  - (b) “security” includes securities not creating or evidencing a charge on assets, and
  - (c) “share” includes stock and any other interest of a member in a company.

### **739 Meaning of “relevant company” in sections 737 and 738**

- (1) A company is a relevant company for the purposes of sections 737 and 738 if it is—
  - (a) a company under the control of not more than 5 persons (but see subsection (2)), or
  - (b) any other company none of whose shares or stocks is—
    - (i) included in the official UK list, and
    - (ii) dealt in on a recognised stock exchange in the United Kingdom regularly or from time to time.
- (2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.
- (3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.
- (4) Section 450 (meaning of “control” for the purposes of Part 10 (close companies)) applies for the purposes of this section.

### **740 Abnormal dividends: general**

- (1) An amount received by way of dividend is treated as abnormal for the purposes of this Part if the appropriate authority is satisfied—
  - (a) in any case that the excessive return condition is met (see section 741), or
  - (b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 742).

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- (2) In subsection (1) “the appropriate authority” means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Part—
- (a) an officer of Revenue and Customs,
  - (b) the Commissioners for Her Majesty's Revenue and Customs, or
  - (c) the tribunal.

#### **741 Abnormal dividends: the excessive return condition**

- (1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.
- (2) In this section “the relevant securities” means—
- (a) the securities in respect of which the dividend was received, and
  - (b) if those securities are derived from securities previously acquired by the recipient, the securities that were previously acquired.
- (3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had—
- (a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and
  - (b) to any dividends paid and other distributions made in respect of them during that time.
- (4) If—
- (a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or
  - (b) no consideration was so provided,
- for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

#### **742 Abnormal dividends: the excessive accrual condition**

- (1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—
- (a) the dividend had accrued from day to day, and
  - (b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.
- (2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—
- (a) sell or otherwise dispose of any of the securities or any securities similar to them, or
  - (b) acquire an option to sell any of the securities or any securities similar to them.
- (3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—
- (a) to the same rights against the same persons as to capital and interest, and
  - (b) to the same remedies for the enforcement of those rights.

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- (4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.
- (5) Subsection (3) applies despite any differences—
  - (a) in the total nominal amounts of the respective securities,
  - (b) in the form in which they are held, or
  - (c) in the way in which they can be transferred.

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