



Corporation Tax Act 2010

2010 CHAPTER 4

PART 15

TRANSACTIONS IN SECURITIES

Introduction

731 Overview of Part

- (1) This Part makes provision for counteracting corporation tax advantages obtained or obtainable by companies to which section 733 applies in respect of a transaction or transactions in securities.
- (2) See section 746 (counteraction notices) for the way in which the corporation tax advantages may be counteracted.

732 Meaning of “corporation tax advantage”

- (1) In this Part “corporation tax advantage” means—
 - (a) a relief from corporation tax or increased relief from corporation tax,
 - (b) a repayment of corporation tax or increased repayment of corporation tax,
 - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or
 - (d) the avoidance of a possible assessment to corporation tax.
- (2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—
 - (a) by receipts accruing in such a way that the recipient does not pay or bear corporation tax on them, or
 - (b) by a deduction in calculating profits or gains.

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Company liable to counteraction of corporation tax advantage

733 Company liable to counteraction of corporation tax advantage

- (1) This section applies to a company in respect of a transaction in securities or two or more such transactions if the company is in a position to obtain or has obtained a corporation tax advantage—
 - (a) in circumstances where any of the provisions specified in subsection (2) applies in relation to the company, and
 - (b) in consequence of—
 - (i) the transaction, or
 - (ii) the combined effect of the transactions.
- (2) The provisions are—
 - section 735 (abnormal dividends used for exemptions or reliefs (circumstance A)),
 - section 736 (receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)),
 - section 737 (receipt of consideration in connection with relevant company distribution (circumstance D)), and
 - section 738 (receipt of assets of relevant company (circumstance E)).
- (3) For the purposes of this Part a corporation tax advantage is treated as obtained or obtainable by a company in consequence of—
 - (a) a transaction in securities, or
 - (b) the combined effect of two or more such transactions,
 if it is obtained or obtainable by the company in consequence of the combined effect of the transaction or transactions and the liquidation of a company.
- (4) This section is subject to—
 - section 734 (exception where no tax avoidance object shown),
 - section 744(3) (disapplication of this section where company receiving preliminary notification that this section may apply makes a statutory declaration and the relevant officer of Revenue and Customs sees no reason to take further action), and
 - section 745(5) (determination by tribunal that there is no prima facie case that this section applies).

734 Exception where no tax avoidance object shown

- (1) Section 733 does not apply to a company in respect of a transaction in securities or two or more such transactions if the company shows that the transaction or transactions meet conditions A and B.
- (2) Condition A is that the transaction or transactions are effected—
 - (a) for genuine commercial reasons, or
 - (b) in the ordinary course of making or managing investments.
- (3) Condition B is that enabling corporation tax advantages to be obtained is not the main object or one of the main objects of the transaction or, as the case may be, any of the transactions.

Circumstances in which corporation tax advantages obtained or obtainable

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

- (1) This section applies in relation to a company if subsections (2) to (4) apply.
- (2) The company receives an abnormal amount by way of dividend (see section 740).
- (3) The receipt is in connection with—
 - (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
 - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
 - (c) the distribution, transfer or realisation of assets of a company, or
 - (d) the application of such assets in discharge of liabilities.
- (4) The amount so received is taken into account for the purposes of the application of franked investment income for the purposes of regulations made under section 32 of FA 1998 (unrelieved surplus advance corporation tax).

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).
- (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.

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- (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.
- (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).
- (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

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- (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.
- (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.

Procedure for counteraction of corporation tax advantages

743 Preliminary notification that section 733 may apply

- (1) An officer of Revenue and Customs must notify a company if the officer has reason to believe that—

- (a) section 733 (company liable to counteraction of corporation tax advantage) may apply to the company in respect of a transaction or transactions, and
 - (b) a counteraction notice ought to be served on the company under section 746 about the transaction or transactions.
- (2) The notification must specify the transaction or transactions.
- (3) See section 746 for the serving of counteraction notices, and sections 744 and 745 for cases where the company on which the notice under this section is served disagrees that section 733 applies.

744 Opposed notifications: statutory declarations

- (1) If a company on which a notification is served under section 743 is of the opinion that section 733 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions specified in the notification, the company may—
- (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
 - (b) send it to the officer of Revenue and Customs.
- (2) Such a declaration must be sent within 30 days of the issue of the notification.
- (3) If the company sends that declaration to the officer and the officer sees no reason to take further action—
- (a) section 733 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the company under section 746 about the transaction or transactions.

745 Opposed notifications: determinations by tribunal

- (1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 744(1) sees reason to take further action about the transaction or transactions in question.
- (2) The officer must send the tribunal a certificate to that effect, together with the statutory declaration.
- (3) The officer may also send the tribunal a counter-statement with the certificate.
- (4) The tribunal must—
- (a) consider the declaration and certificate and any counter-statement, and
 - (b) determine whether there is a prima facie case for the officer to take further action on the basis that section 733 (company liable to counteraction of corporation tax advantage) applies to the company by which the declaration was made in respect of the transaction or transactions in question.
- (5) If the tribunal determines that there is no such case—
- (a) section 733 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the company under section 746 about the transaction or transactions.

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- (6) But such a determination does not affect the application of sections 733 and 746 in respect of transactions including not only the ones to which the determination relates but also others.

746 Counteraction notices

- (1) If—
- (a) a company on which a notification is served under section 743 does not send a statutory declaration to an officer of Revenue and Customs under section 744 within 30 days of the issue of the notification, or
 - (b) the tribunal to which such a declaration is sent under section 745 determines that there is a prima facie case for serving a notice on a company under this section,
- the corporation tax advantage in question is to be counteracted by adjustments.
- (2) The adjustments required to be made to counteract the corporation tax advantage and the basis on which they are to be made are to be specified in a notice served on the company by an officer of Revenue and Customs.
- (3) In this Part such a notice is referred to as a “counteraction notice”.
- (4) Any of the following adjustments may be specified—
- (a) an assessment,
 - (b) the nullifying of a right to repayment,
 - (c) the requiring of the return of a repayment already made, or
 - (d) the calculation or recalculation of profits or gains or liability to corporation tax.
- (5) Nothing in this section authorises the making of an assessment later than 6 years after the accounting period to which the corporation tax advantage relates.
- (6) This section is subject to—
- section 747 (timing of assessments in section 738 cases), and
 - section 749(2) (effect of clearance notification under section 748).
- (7) But no other provision in the Corporation Tax Acts is to be read as limiting the powers conferred by this section.

747 Timing of assessments in section 738 cases

- (1) This section applies if section 733 (company liable to counteraction of corporation tax advantage) applies to a company because it is in a position to obtain or has obtained a corporation tax advantage by falling within the circumstances mentioned in section 738 (receipt of relevant company assets (circumstance E)) when share capital is repaid.
- (2) An assessment to corporation tax made in accordance with a counteraction notice must be an assessment for the accounting period in which the repayment occurs.
- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.

- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

Clearance procedure

748 Application for clearance of transactions

- (1) A company may provide the Commissioners for Her Majesty’s Revenue and Customs with particulars of a transaction or transactions effected or to be effected by it in order to obtain a notification about them under this section.
- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the company what further information they require for those purposes within 30 days of receiving the particulars or further information.
- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.
- (4) The Commissioners must notify the company whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

749 Effect of clearance notification under section 748

- (1) This section applies if the Commissioners for Her Majesty’s Revenue and Customs notify a company under section 748 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (2) No such notice may be served on the company in respect of the transaction or transactions.
- (3) But the notification does not prevent such a notice being served on the company in respect of transactions including not only the ones to which the notification relates but also others.
- (4) The notification is void if the particulars and any further information given under section 748 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

Appeals

750 Appeals against counteraction notices

- (1) A company on which a counteraction notice has been served may appeal on the grounds that—

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- (a) section 733 (company liable to counteraction of corporation tax advantage) does not apply to the company in respect of the transaction or transactions in question, or
 - (b) the adjustments directed to be made are inappropriate.
- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty’s Revenue and Customs within 30 days of the service of the counteraction notice.
- (3) On an appeal under this section the tribunal may—
- (a) affirm, vary or cancel the counteraction notice, or
 - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (4) But the bringing of an appeal under this section does not affect—
- (a) the validity of the counteraction notice, or
 - (b) the validity of any other thing done under or in accordance with section 746 (counteraction notices),
- pending the determination of the proceedings.

Interpretation

751 Interpretation of Part

In this Part—

“company” includes any body corporate,

“dividends” includes references to other qualifying distributions and to interest,

“securities”—

- (a) includes shares and stock, and
- (b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,

“trading stock” has the meaning given by section 163 of CTA 2009, and

“transaction in securities” means transactions, of whatever description, relating to securities, and in particular—

- (a) the purchase, sale or exchange of securities,
- (b) issuing or securing the issue of new securities,
- (c) applying or subscribing for new securities, and
- (d) altering or securing the alteration of the rights attached to securities.