



# Finance (No. 2) Act 2023

## 2023 CHAPTER 30

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *International matters*

### 36 Share exchanges involving non-UK incorporated close companies

- (1) TCGA 1992 is amended in accordance with [subsections \(2\) and \(3\)](#).
- (2) After section 138 (exchange of securities and schemes of reconstruction: procedure for clearance in advance) insert—

#### **“138ZA Share exchanges involving non-UK incorporated close companies**

- (1) Section [138ZB](#) applies where—
  - (a) section 135 or 136 applies to an issue by a company (“company B”) of shares in or debentures of that company (“the exchanged shares or debentures”) in exchange for or in respect of shares in or debentures of another company (“company A”),
  - (b) immediately before the issue is made, company A is a close company which is incorporated in the United Kingdom (whether or not it is resident in the United Kingdom),
  - (c) immediately after the issue is made, company B is a close company which is not incorporated in the United Kingdom (whether or not it is resident in the United Kingdom), and
  - (d) the person to whom the exchanged shares or debentures are issued (“P”) is an individual who meets the conditions in [subsection \(2\)](#).
- (2) Those conditions are that—
  - (a) immediately before the issue is made, P—

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- (i) has a material interest in company A, and
- (ii) is a participator in company A, and
- (b) immediately after the issue is made, P—
  - (i) has a material interest in company B, and
  - (ii) is a participator in company B.
- (3) A person has a material interest in a company for the purposes of this section if condition A or B is met.
- (4) Condition A is that the person, an associate of the person, or the person or an associate of the person together with one or more associates is—
  - (a) the beneficial owner of, or
  - (b) directly or indirectly able to control,
 more than 5% of the ordinary share capital of the company.
- (5) Condition B is that the person, an associate of the person, or the person or an associate of the person together with one or more associates possesses or is entitled to acquire such rights as would—
  - (a) in the event of the winding up of the company, or
  - (b) in any other circumstances,
 give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (6) Chapter 2 of Part 10 of CTA 2010 (meaning of “close company” and related terms) applies for the purposes of this section but with the omission of section 442(a) (exclusion of non-UK resident companies).
- (7) In relation to a company that has no share capital, this section applies as if—
  - (a) references to shares in, or debentures of, the company included any interests of the company possessed by members of the company, and
  - (b) the reference in [subsection \(4\)](#) to the ordinary share capital of the company were to all such interests.
- (8) In this section “ordinary share capital” has the meaning it has in the Corporation Tax Acts (see section 1119 of CTA 2010).

### **138ZB Treatment of securities connected with such exchanges**

- (1) Where this section applies (see [section 138ZA](#)), a security falling within [subsection \(2\)](#) is to be treated for the purposes of this Act as situated in the United Kingdom (whether or not it would otherwise be so treated) if—
  - (a) it is held by P, other than as a result of a disposal of the security by P’s spouse or civil partner (“S”) to P to which section 58 (no loss or gain on disposals between spouses or civil partners) did not apply, or
  - (b) is held by S, other than as a result of a disposal of the security by P to S to which that section did not apply.
- (2) Those securities are as follows—
  - (a) the exchanged shares or debentures;
  - (b) a security of company B acquired by P on or after the day on which the exchanged shares or debentures are issued;
  - (c) where—

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- (i) there is a repo (within the meaning of section 263A) in respect of a security, and
    - (ii) that security falls within any of the paragraphs of this subsection (including this paragraph),any similar security (see section 263AA(5) and (6)) that P, or a person connected with P, buys back under the repo;
  - (d) where—
    - (i) P transfers a security to another person under a stock lending arrangement (within the meaning of section 263B), and
    - (ii) that security falls within any of the paragraphs of this subsection (including this paragraph),any security of a similar description (see section 263B(6)) transferred back to P under the arrangement;
  - (e) a security of a company issued to P where—
    - (i) the security is issued in exchange for, or in respect of, another security,
    - (ii) section 135 or 136 applies to that issue,
    - (iii) the other security falls within any of the paragraphs of this subsection (including this paragraph), and
    - (iv) P has a material interest in the company (within the meaning of [section 138ZA\(3\)](#));
  - (f) where a security of a company, other than company B, falls within paragraph (e), a security of that company acquired by P on or after the first day on which a security of that company fell within that paragraph.
- (3) For the purposes of paragraphs (b), (f) and (e) of [subsection \(2\)](#), it does not matter whether or not—
- (a) consideration was given for the security acquired by P, or
  - (b) the security acquired by P is of a different class from the exchanged shares or debentures.
- (4) If S acquires a security falling within [subsection \(2\)](#) as a result of a disposal by P to which section 58 applies, subsections (2) and (3) have effect, from the time of its acquisition by S (whether or not S continues to hold it), as if every reference to “P” were to “P or S”.
- (5) In this section—
- “company B”, “P”, and “the exchanged shares or debentures” are to be construed in accordance with [section 138ZA](#);
  - “security” means—
    - (a) shares in, or debentures of, a company, or
    - (b) interests of a company that has no share capital that are possessed by members of the company.

### **138ZC Election to disapply section 135 or 136**

- (1) This section applies where section 138ZB would, but for an election under this section, apply in relation to the issue by a company of shares in or debentures

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of that company in exchange for, or in respect of, shares in or debentures of another company.

- (2) The person to whom the shares or debentures are issued may elect for section 135 or 136 not to apply to the issue, and accordingly—
  - (a) the exchange or scheme of reconstruction in question will not be treated as a reorganisation within the meaning of section 126, and
  - (b) section 138ZB will not apply in relation to the issue.
- (3) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the shares or debentures are issued.”
- (3) In section 288 (interpretation), in the definition of “close company”, at the end insert “(subject to section 138ZA(6))”.
- (4) The amendments made by subsections (2) and (3) have effect in relation to an issue of shares or debentures made on or after 17 November 2022.
- (5) In section 830 of ITTOIA 2005 (meaning of “relevant foreign income”), after subsection (3) insert—
  - (3A) “Relevant foreign income” does not include income paid in respect of a security, within the meaning of section 138ZB of TCGA 1992, if—
    - (a) the security is treated, for the purposes of that Act, as situated in the United Kingdom as a result of section 138ZB of that Act, and
    - (b) that section applies in respect of the security as a result of an issue of shares in or debentures of a company in exchange for, or in respect of, shares in or debentures of another company that is incorporated, and is resident, in the United Kingdom.”
- (6) The amendment made by subsection (5) is treated as having come into force on 17 November 2022.

### **37 Records relating to transfer pricing**

Schedule 5 makes provision about the keeping of records for the purposes of Part 4 of TIOPA 2010.

### **38 Double taxation relief: foreign nominal rates**

- (1) No extended time limit claim may be made on or after 20 July 2022 for a credit calculated by reference to a foreign nominal rate of tax unless subsection (2) or (3) applies in relation to the claim.
- (2) This subsection applies in relation to an extended time limit claim if the adjustment in the amount of tax payable that gives rise to the claim—
  - (a) is not calculated by reference to a foreign nominal rate of tax, and
  - (b) occurred on or after 21 July 2016 but before 20 July 2022.
- (3) This subsection applies in relation to an extended time limit claim if the claim relates to an accounting period that ended before 20 July 2022 (“the relevant accounting period”) and as at that date—

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- (a) an appeal under section 31 of TMA 1970 against an assessment to tax in relation to the relevant accounting period has been brought but has not been finally determined or withdrawn,
  - (b) an enquiry under paragraph 5 of Schedule 1A to TMA 1970 into a claim in relation to the relevant accounting period could be opened or is in progress,
  - (c) an appeal against a conclusion stated in respect of such a claim, or an amendment of such a claim, as a result of an enquiry under that paragraph—
    - (i) could be brought, or
    - (ii) has been brought but has not been finally determined or withdrawn,
  - (d) an enquiry under Part 4 of Schedule 18 to FA 1998 into the company tax return for the relevant accounting period could be opened or is in progress, or
  - (e) an appeal against an amendment of that return as a result of an enquiry under that Part—
    - (i) could be brought, or
    - (ii) has been brought but has not been finally determined or withdrawn.
- (4) An “extended time limit claim” is a claim under—
- (a) section 79 of TIOPA 2010 (extended time limits for certain claims), or
  - (b) section 806(2) of ICTA (extended time limits for certain claims in relation to accounting periods to which section 79 of TIOPA 2010 does not apply).

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