



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XI

CLOSE COMPANIES

CHAPTER I

INTERPRETATIVE PROVISIONS

414 Close companies

- (1) For the purposes of the Tax Acts, a “close company” is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—
 - (a) to a company not resident in the United Kingdom;
 - (b) to a registered industrial and provident society within the meaning of section 486(12) or to a building society;
 - (c) to a company controlled by or on behalf of the Crown, and not otherwise a close company; or
 - (d) to a company falling within section 415 or subsection (5) below.
- (2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if—
 - (a) on the assumption that it is so, or
 - (b) on the assumption that it and any other such company or companies are so, more than half of any amount falling to be apportioned under section 423 in the case of the company (including any sum which has been apportioned to it, or could on either of those assumptions be apportioned to it, under that section) could be apportioned among five or fewer participators, or among participators who are directors.
- (3) In ascertaining under subsection (2) above whether any amount could be apportioned among five or fewer participators or among participators who are directors, account

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shall, in cases where an original apportionment and any sub-apportionment are involved, be taken only of persons among whom that amount could finally be apportioned as the result of the whole process of original apportionment and sub-apportionment and those persons shall be treated as participators or directors if they are participators or directors of any company in the case of which either an original apportionment or any sub-apportionment could be made.

- (4) For the purposes of this section—
- (a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and
 - (b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.
- (5) A company is not to be treated as a close company—
- (a) if—
 - (i) it is controlled by a company which is not a close company, or by two or more companies none of which is a close company; and
 - (ii) it cannot be treated as a close company except by taking as one of the five or fewer participators requisite for its being so treated a company which is not a close company;
 - (b) if it cannot be treated as a close company except by virtue of paragraph (c) of section 416(2) and it would not be a close company if the reference in that paragraph to participators did not include loan creditors who are companies other than close companies.
- (6) References in subsection (5) above to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.
- (7) If shares in any company (“the first company”) are held on trust for an exempt approved scheme as defined in section 592, then, unless the scheme is established wholly or mainly for the benefit of persons who are, or are dependants of, directors or employees or past directors or employees of—
- (a) the first company; or
 - (b) an associated company of the first company; or
 - (c) a company which is under the control of any director or associate of a director of the first company or of two or more persons each of whom is such a director or associate; or
 - (d) a close company;

the persons holding the shares shall, for the purposes of subsection (5) above, be deemed to be the beneficial owners of the shares and, in that capacity, to be a company which is not a close company.

415 Certain quoted companies not to be close companies

- (1) Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—
- (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been

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- 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 quoted in the official list of a recognised stock exchange.
- (2) Subsection (1) above shall 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 per cent.
- (3) For the purposes of subsection (1) above shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
- (a) fall within subsection (4) below, and
- (b) are not within the exceptions in subsection (5) below,
- and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- (4) Shares shall fall within this subsection (as being beneficially held by the public)—
- (a) if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
- (b) if held on trust for an exempt approved scheme as defined in section 592, or
- (c) if they are not comprised in a principal member's holding.
- (5) Shares shall not be deemed to be held by the public if they are held—
- (a) by any director or associate of a director of the company, or
- (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
- (c) by any associated company of the company, or
- (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.
- References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.
- (6) For the purposes of this section—
- (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
- (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.

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(8) In this section “shares” include stock.

416 Meaning of “associated company” and “control”

- (1) For the purposes of this Part, except paragraphs 2 and 9(1)(a), (2)(a) and (3)(a) of Schedule 19, a company is to be treated as another’s “associated company” at a given time if, at that time or at any other time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.
- (2) For the purposes of this Part, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company’s affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—
 - (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
 - (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
 - (c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.
- (3) Where two or more persons together satisfy any of the conditions of subsection (2) above, they shall be taken to have control of the company.
- (4) For the purposes of subsection (2) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.
- (5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.
- (6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

417 Meaning of “participator”, “associate”, “director” and “loan creditor”

- (1) For the purposes of this Part, a “participator” is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—
 - (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
 - (b) any loan creditor of the company;

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- (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing “distributions” without regard to section 418) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and
- (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

- (2) The provisions of subsection (1) above are without prejudice to any particular provision of this Part requiring a participator in one company to be treated as being also a participator in another company.
- (3) For the purposes of this Part “associate” means, in relation to a participator—
 - (a) any relative or partner of the participator;
 - (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor (“settlement” and “settlor” having here the same meaning as in section 681(4)); and
 - (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person—
 - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and
 - (ii) if the participator is a company, any other company interested in those shares or obligations;and has a corresponding meaning in relation to a person other than a participator.
- (4) In subsection (3) above “relative” means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (5) For the purposes of this Part “director” includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—
 - (a) is a manager of the company or otherwise concerned in the management of the company’s trade or business, and
 - (b) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.
- (6) In subsection (5)(b) above the expression “either on his own or with one or more associates” requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own.
- (7) Subject to subsection (9) below, for the purposes of this Part “loan creditor”, in relation to a company, means a creditor in respect of any debt incurred by the company—
 - (a) for any money borrowed or capital assets acquired by the company; or
 - (b) for any right to receive income created in favour of the company; or

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- (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 thereon);
- or in respect of any redeemable loan capital issued by the company.
- (8) Subject to subsection (9) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (7) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.
 - (9) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

Additional matters to be treated as distributions

418 “Distribution” to include certain expenses of close companies

- (1) Subject to such exceptions as are mentioned in section 209(1), in the Corporation Tax Acts “distribution”, in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by subsection (2) below.
- (2) Subject to subsection (3) below, where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator.
- (3) Subsection (2) above shall not apply to expense incurred in or in connection with the provision—
 - (a) for a person employed in director’s or higher-paid employment (within the meaning of section 167) of such benefits as are mentioned in any of sections 154 to 165; or
 - (b) of living accommodation for any person if the accommodation is (within the meaning of section 145) provided by reason of his employment; or
 - (c) for the spouse, children or dependants of a person employed by the company of any pension, annuity, lump sum, gratuity or other like benefit to be given on that person’s death or retirement.
- (4) The amount of the expense to be taken into account under subsection (2) above as a distribution shall be the same as would under Chapter II of Part V be the cash equivalent of the resultant benefit to the participator.
- (5) Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
 - (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and
 - (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.

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- (6) The question whether one body corporate is a subsidiary of another for the purposes of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
 - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or
 - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (7) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

- (8) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.