



Corporation Tax Act 2010

2010 CHAPTER 4

PART 23

COMPANY DISTRIBUTIONS

CHAPTER 5

DEMURGERS

Introduction

1073 Key terms etc

- (1) The following are key terms in this Chapter—
 - (a) “chargeable payment” (see sections 1088 and 1089),
 - (b) “company concerned in an exempt distribution” (see section 1090),
 - (c) “the distributing company” (see section 1079),
 - (d) “exempt distribution” (defined in section 1075), and
 - (e) “relevant company” (defined in section 1080).
- (2) For a further rule about chargeable payments made within 5 years after an exempt distribution see section 1028 (rule that they are not treated as repayments of capital for certain purposes).

1074 Purpose of provisions about demergers

- (1) The purpose of the provisions about demergers is to facilitate certain transactions by which trading activities carried on by a single company or group are divided so as to be carried on—
 - (a) by two or more companies not belonging to the same group, or
 - (b) by two or more independent groups.

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- (2) In subsection (1) “the provisions about demergers” means—
- (a) this Chapter, except section 1078 (and section 1075, so far as relating to section 1078), and
 - (b) section 1028 (chargeable payments not treated as repayments of share capital).

Exempt distributions

1075 Exempt distributions

- (1) An exempt distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.
- (2) In this Chapter “exempt distribution” means a distribution which is an exempt distribution by virtue of section 1076, 1077 or 1078.

1076 Transfer of shares in subsidiaries to members

A distribution is an exempt distribution if—

- (a) it consists of the transfer by a company to all or any of its members of shares in one or more companies which are its 75% subsidiaries,
- (b) each of conditions A to F in sections 1081 and 1082 is met in respect of the distribution, and
- (c) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

1077 Transfer by distributing company and issue of shares by transferee company

- (1) This section applies to a distribution which consists of both of the following—
 - (a) the transfer by a company to one or more other companies (“the transferee company or companies”) of—
 - (i) a trade or trades, or
 - (ii) shares in one or more companies which are 75% subsidiaries of the company making the transfer, and
 - (b) the issue of shares by the transferee company or companies to all or any of the members of the company making the transfer.
- (2) A distribution to which this section applies is an exempt distribution if—
 - (a) each of conditions A to D in section 1081 and each of conditions G to K in section 1083 is met in respect of the distribution, and
 - (b) if the company making the transfer is a 75% subsidiary of another company, conditions L and M in section 1085 are met in respect of the distribution.

1078 Division of business in a cross-border transfer

- (1) This section applies to a distribution which consists of—
 - (a) the transfer of part of a business by a company to one or more other companies (“the transferee company or companies”), and
 - (b) the issue of shares by the transferee company or companies to the members of the company making the transfer.

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- (2) A distribution to which this section applies is an exempt distribution if either—
- (a) each of the tests in paragraphs (a) to (f) of section 140A(1A) of TCGA 1992 (cross-border transfers: division of UK business) is met in relation to it, or
 - (b) each of the tests in paragraphs (a) to (e) of section 140C(1A) of TCGA 1992 (cross-border transfers: division of non-UK business) is met in relation to it.

1079 “The distributing company”

References in this Chapter to the distributing company are—

- (a) in the case of a distribution falling within paragraph (a) of section 1076, to the company that makes the transfer of shares mentioned in that paragraph,
- (b) in the case of a distribution falling within section 1077(1), to the company that makes the transfer mentioned in section 1077(1)(a), and
- (c) in the case of a distribution falling within section 1078(1), to the company that makes the transfer of part of a business mentioned in section 1078(1)(a).

1080 Meaning of “relevant company”

- (1) This section gives the meaning of “relevant company” in this Chapter.
- (2) In the case of a distribution falling within section 1076(a) the relevant companies are—
 - (a) the distributing company, and
 - (b) each subsidiary whose shares are transferred as mentioned in section 1076(a).
- (3) In the case of a distribution falling within section 1077(1), the relevant companies are—
 - (a) the distributing company,
 - (b) each transferee company mentioned in section 1077(1)(a), and
 - (c) each subsidiary whose shares are transferred as mentioned in section 1077(1)(a)(ii).
- (4) In the case of a distribution falling within section 1078(1), the relevant companies are—
 - (a) the distributing company, and
 - (b) each transferee company mentioned in section 1078(1)(a).

Exemption by virtue of section 1076 or 1077: conditions

1081 General conditions

- (1) Condition A is that each relevant company must be [^{F1}UK resident or] resident in a member State at the time of the distribution.
- (2) Condition B is that at the time of the distribution—
 - (a) the distributing company must be either a trading company or a member of a trading group, and
 - (b) each subsidiary whose shares are transferred as mentioned in section 1076(a) or 1077(1)(a)(ii) must be either a trading company or the holding company of a trading group.

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- (3) Condition C is that the distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which—
- (a) before the distribution are carried on by a single company or group, and
 - (b) after the distribution will be carried on by two or more companies or groups.
- (4) Condition D is that the distribution must not form part of a scheme or arrangement to which subsection (5) applies.
- (5) This subsection applies to any scheme or arrangement the main purpose or one of the main purposes of which is—
- (a) the avoidance of tax,
 - (b) the making of a chargeable payment (see section 1088),
 - (c) the making, in pursuance of a scheme or arrangements with a company (“A”) or with any of its main participators, of what would be a chargeable payment if A were an unquoted company,
 - (d) the acquisition by any person or persons, other than the members of the distributing company, of control of—
 - (i) the distributing company,
 - (ii) any other relevant company, or
 - (iii) any company which belongs to the same group as the distributing company or any other relevant company,
 - (e) the cessation of a trade after the distribution, or
 - (f) the sale of a trade after the distribution.
- (6) Subsections (5)(b) and (c) are without prejudice to the width of subsection (5)(a).
- (7) In subsection (5)—
- “group” means a company which has one or more 51% subsidiaries together with those subsidiaries,
- “main participators” has the meaning given by section 1089(1)(b), and
- “tax” includes stamp duty and stamp duty land tax.

Textual Amendments

F1 Words in s. 1081(1) inserted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/818\)](#), regs. 1(2), **8(5)**; 2020 c. 1, Sch. 5 para. 1(1)

1082 Conditions for distributions within section 1076(a)

- (1) Condition E is that the shares mentioned in section 1076(a)—
- (a) must not be redeemable,
 - (b) must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary, and
 - (c) must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary.
- (2) Condition F is that the distributing company must after the distribution be either—
- (a) a trading company, or
 - (b) the holding company of a trading group.

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But see subsections (3) and (4).

- (3) Condition F need not be met if the distributing company is a 75% subsidiary of another company.
- (4) Condition F need not be met if—
 - (a) the transfer mentioned in section 1076(a) relates to two or more 75% subsidiaries of the distributing company, and
 - (b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.

1083 Conditions for distributions within section 1077(1)

- (1) Condition G is that if a trade is transferred, the distributing company must either—
 - (a) not retain any interest in that trade, or
 - (b) retain only a minor interest in it.
- (2) Condition H is that if shares in a subsidiary are transferred those shares—
 - (a) must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary, and
 - (b) must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary.
- (3) Condition I is that the only or main activity of the transferee company, or each transferee company, after the distribution must be—
 - (a) the carrying on of the trade, or
 - (b) the holding of the shares transferred to it.
- (4) Condition J is that the shares issued by the transferee company or each transferee company—
 - (a) must not be redeemable,
 - (b) must constitute the whole or substantially the whole of its issued ordinary share capital, and
 - (c) must confer the whole or substantially the whole of the voting rights in that company.
- (5) Condition K is that the distributing company must after the distribution be either a trading company or the holding company of a trading group.

1084 Cases where condition K does not apply

- (1) Condition K need not be met if the distributing company is a 75% subsidiary of another company.
- (2) Condition K need not be met if—
 - (a) there are two or more transferee companies each of which has transferred to it—
 - (i) a trade, or
 - (ii) shares in a separate 75% subsidiary of the distributing company, and

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- (b) the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution on a winding up or otherwise.

1085 Conditions to be met if the distributing company is a 75% subsidiary

- (1) Condition L is that the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group.
- (2) Condition M is that the distribution (“the original distribution”) must be followed by one or more other distributions (“further distributions”) falling within section 1076(a) or 1077(1)(a)(ii) which—
 - (a) are exempt distributions, and
 - (b) comply with subsection (3).
- (3) To comply with this subsection a further distribution must result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the original distribution becoming members of—
 - (a) the transferee company or each transferee company to which a trade was transferred by the distributing company,
 - (b) the subsidiary or each subsidiary whose shares were transferred by the distributing company, or
 - (c) a company (other than the holding company) of which the company or companies mentioned in paragraph (a) or (b) are 75% subsidiaries.

Chargeable payments

1086 Chargeable payments connected with exempt distributions

- (1) This section applies if a chargeable payment is made within 5 years after an exempt distribution.
- (2) The amount or value of the payment is chargeable—
 - (a) to income tax, or
 - (b) to corporation tax under the charge to corporation tax on income.
- (3) An amount charged to income tax under subsection (2) is treated for income tax purposes as an amount of income.
- (4) Income tax under subsection (2) is charged on the full amount or value of the payment made in the tax year.
- (5) The person liable for any income tax charged under subsection (2) is the person receiving or entitled to the payment.
- (6) References in this section and sections 1087 to 1094 to a payment include—
 - (a) the assumption of a liability, and
 - (b) any other transfer of money's worth.

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1087 Chargeable payments not deductible in calculating profits

If a chargeable payment is made within 5 years after an exempt distribution, the chargeable payment is treated as a distribution for the purposes of section 1305 of CTA 2009 (no deduction for distributions in calculation of a company's profits).

1088 Meaning of “chargeable payment”

- (1) In this Chapter “a chargeable payment” means any payment which—
 - (a) meets each of conditions A to D in this section, or
 - (b) is a chargeable payment by virtue of section 1089.
- (2) Condition A is that the payment is made by a company concerned in an exempt distribution and is made (directly or indirectly)—
 - (a) to a member of that company, or
 - (b) to a member of any other company concerned in the exempt distribution.
- (3) Condition B is that the payment is made—
 - (a) in connection with the shares in the company making the payment,
 - (b) in connection with the shares in any other company concerned in the exempt distribution, or
 - (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).
- (4) Condition C is that the payment—
 - (a) is not made for genuine commercial reasons, or
 - (b) forms part of a tax avoidance scheme.
- (5) Condition D is that the payment—
 - (a) is not a distribution or an exempt distribution, and
 - (b) is not made to a company that belongs to the same group as the company making the payment.
- (6) In this section and section 1089—

“tax avoidance scheme” means a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

“tax” includes stamp duty and stamp duty land tax.
- (7) This section is to be read with section 1089.

1089 Meaning of “chargeable payment”: unquoted companies

- (1) This section applies if a company concerned in an exempt distribution is an unquoted company and a person makes a payment (to any person) in pursuance of a scheme or arrangement made—
 - (a) with the unquoted company, or
 - (b) if the unquoted company—
 - (i) is under the control of 5 or fewer persons (its “main participators”), and
 - (ii) is not excepted by subsection (6),with any of the unquoted company's main participators.

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- (2) The payment is a chargeable payment if it meets each of conditions B1 to D1.
- (3) Condition B1 is that the payment is made—
 - (a) in connection with the shares in the company (if it is a company) making the payment,
 - (b) in connection with the shares in any company concerned in the exempt distribution, or
 - (c) in connection with any transaction affecting the shares mentioned in paragraph (a) or (b).
- (4) Condition C1 is that the payment—
 - (a) is not made for genuine commercial reasons, or
 - (b) forms part of a tax avoidance scheme.
- (5) Condition D1 is that the payment (if made by a company)—
 - (a) is not a distribution or an exempt distribution, and
 - (b) is not made to a company that belongs to the same group as that company.
- (6) The unquoted company is excepted for the purposes of subsection (1)(b)(ii) if—
 - (a) it is under the control of (and only of) a company, and
 - (b) that company is not under the control of 5 or fewer persons.

1090 Meaning of “company concerned in an exempt distribution”

- (1) For the purposes of this Chapter the companies concerned in an exempt distribution are—
 - (a) any relevant company (as defined in section 1080), and
 - (b) any other company which was connected with any relevant company for the whole or any part of the affected period.
- (2) In this section “the affected period” means the period—
 - (a) beginning with the exempt distribution, and
 - (b) ending with the making of the payment in question.
- (3) For the purposes of this section, if a company (“A”) is connected with another company (“B”) in the affected period, A is also connected in that period with any company with which B is connected (with or without the help of this subsection) in that period.

Advance clearance

1091 Advance clearance of distributions

- (1) Before a distribution is made, the distributing company may apply under this section to the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).
- (2) If, before the distribution is made, the Commissioners notify that company that they are satisfied that it will be an exempt distribution, the distribution is treated as an exempt distribution.

Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, Chapter 5. (See end of Document for details)

1092 Advance clearance of payments

- (1) If—
 - (a) a person intending to make a payment applies under this section to the Commissioners, and
 - (b) before the payment is made the Commissioners notify the person that they are satisfied that the payment meets the conditions set out in subsection (2),the payment is not treated as a chargeable payment.
- (2) The conditions are that the payment—
 - (a) will be made for genuine commercial reasons, and
 - (b) will not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) In subsection (2) “tax” includes stamp duty and stamp duty land tax.
- (4) A company which—
 - (a) becomes connected with another company, or
 - (b) ceases to be connected with another company,may make an application under subsection (1) with respect to any payments that may be made by it at any time after becoming or ceasing to be connected with the company in question (whether or not there is any present intention to make any payments).
- (5) If the Commissioners give a notification on an application made by virtue of subsection (4), no payment to which the notification relates is to be treated as a chargeable payment merely because the company is or has been connected with the other company.

1093 Requirements relating to applications for clearance

- (1) Any application under section 1091 or 1092—
 - (a) must be in writing, and
 - (b) must contain particulars of the relevant transactions.
- (2) The Commissioners may by notice require a person making an application under section 1091 or 1092 to provide further particulars for the purpose of enabling them to make their decision.
- (3) The power under subsection (2) must be exercised within 30 days of the receipt of—
 - (a) the application, or
 - (b) any further particulars previously required under subsection (2).
- (4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.

1094 Decision of the Commissioners or tribunal

- (1) The Commissioners must notify their decision to the person making the application under section 1091 or 1092—
 - (a) within 30 days of receiving the application, or
 - (b) if they give a notice under section 1093(2), within 30 days of when the notice is complied with.

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- (2) Subsection (3) applies if the Commissioners—
 - (a) (in the case of an application under section 1091) notify the applicant that they are not satisfied that the distribution will be an exempt distribution,
 - (b) (in the case of an application under section 1092) notify the applicant that they are not satisfied that a payment meets the conditions set out in section 1092(2), or
 - (c) (in either case) do not notify their decision to the applicant within the time required by subsection (1).
- (3) The applicant may require the Commissioners to transmit the application, together with any notice given and further particulars provided under section 1093(2), to the tribunal.
- (4) In that event, any notification by the tribunal has effect for the purposes of this section as if it were a decision of the Commissioners.
- (5) The right under subsection (3) must be exercised within 30 days of—
 - (a) the notification of the Commissioners' decision, or
 - (b) the time by which the Commissioners are required to notify their decision to the applicant.
- (6) If any particulars provided under section 1093 in relation to an application under section 1091 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the distribution will be an exempt distribution is void.
- (7) If any particulars provided under section 1093 in relation to an application under section 1092 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or tribunal, any resulting notification that the Commissioners are satisfied, or that the tribunal is satisfied, that the payment in question meets the conditions set out in section 1092(2) is void.

Information and returns

1095 Exempt distributions: returns

- (1) A company which makes an exempt distribution must make a return to an officer of Revenue and Customs.
- (2) The return must give details of—
 - (a) the distribution, and
 - (b) the circumstances by reason of which it is exempt.
- (3) The return must be made within 30 days after the distribution.

1096 Chargeable payments etc: returns

- (1) A person must make a return to an officer of Revenue and Customs if—
 - (a) the person makes a chargeable payment within 5 years after the making of an exempt distribution, and
 - (b) the chargeable payment consists of a transfer of money's worth.

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- (2) The return under subsection (1) must give details of—
 - (a) the transaction effecting the transfer,
 - (b) the name and address of each recipient,
 - (c) the value of what is transferred to each recipient, and
 - (d) any payment of money which accompanies the transfer and is itself a chargeable payment.
- (3) A person must make a return to an officer of Revenue and Customs if, within 5 years after the making of an exempt distribution, the person makes a payment or transfer of money's worth which—
 - (a) is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, but
 - (b) would be a chargeable payment if that were not so.
- (4) In subsection (3)(a) “tax” includes stamp duty and stamp duty land tax.
- (5) Subsection (3) does not apply if a notification under section 1092(5) (payment not to be treated as a chargeable payment merely because of a connection between two companies) has effect in relation to the payment or transfer.
- (6) In the case of a transfer, the return under subsection (3) must give the following information—
 - (a) details of the transaction which effects the transfer,
 - (b) the name and address of each recipient,
 - (c) the value of what is transferred to each recipient, and
 - (d) a statement of the circumstances by reason of which the transfer is not a chargeable payment.
- (7) In the case of a payment, the return under subsection (3) must give the following information—
 - (a) the name and address of each recipient,
 - (b) the amount of the payment made to each recipient, and
 - (c) a statement of the circumstances by reason of which the payment is not a chargeable payment.
- (8) The return under subsection (1) or (3) must be made within 30 days after the transfer or payment.

F21097 Information about person for whom a payment is received

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Textual Amendments

F2 S. 1097 omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), **Sch. 23 paras. 64(2)(e), 65(1)(a)** (with Sch. 23 paras. 50, 65(1)(b))

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Supplementary

1098 Meaning of “unquoted company”

- (1) A company is an unquoted company for the purposes of this Chapter if none of its shares is—
 - (a) listed in the Official List of the Stock Exchange, and
 - (b) dealt in on the Stock Exchange regularly or from time to time.
- (2) But a company is not an unquoted company for the purposes of this Chapter if it is under the control of (and only of) one or more companies which are not unquoted companies for those purposes.
- (3) The reference in subsection (1) to shares does not include debenture stock, loan stock, preferred shares or preferred stock.

1099 Other definitions etc

- (1) In this Chapter—
 - “control” has the same meaning as in Part 10 (see sections 450 and 451),
 - “group” means a company which has one or more 75% subsidiaries together with those subsidiaries (but there is a separate definition of “group” for the purposes of section 1081(5)(d)),
 - “holding company” means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,
 - “member” where the reference is to a member of a company—
 - (a) in section 1088(2) includes a person who is a member otherwise than by virtue of holding shares forming part of the ordinary share capital of the company, but
 - (b) elsewhere only includes persons who are members by virtue of holding shares forming part of the ordinary share capital of the company,
 - “shares” includes stock,
 - “trade”, except in subsection (4), does not include dealing in shares, securities, land, trades or commodity futures,
 - “trading activities” is to be read in accordance with the above definition of “trade”,
 - “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades, and
 - “trading group” means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades.
- (2) In determining for the purposes of sections 1076(a), 1077(1), 1082(4) or 1084(2) whether a company (“A”) whose shares are transferred by the distributing company is a 75% subsidiary of the distributing company, ignore any share capital of A which is owned indirectly by the distributing company.
- (3) In determining for the purposes of this Chapter whether one company is a 75% subsidiary of another, the other company is treated as not being the owner of—
 - (a) any share capital which it owns directly in a body corporate as trading stock, or

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- (b) any share capital which it owns indirectly and which is owned directly by a body corporate as trading stock.
- (4) For the purposes of subsection (3) share capital owned by a person is owned as trading stock if (and only if) a profit on a sale of the shares would be treated as a trading receipt of that person's trade.

Changes to legislation:

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