

## SCHEDULES

### SCHEDULE 37

#### COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

##### PART 1

##### CAPITAL GAINS TAX RELIEF

##### *Relief on disposals to employee-ownership trusts*

- 1 In Part 7 of TCGA 1992 (other property, businesses, investments etc), after section 236G insert—

##### *“Employee-ownership trusts*

##### **236H Disposals to employee-ownership trusts**

- (1) This section applies where—
- (a) a person other than a company (“P”) disposes of any ordinary share capital of a company (“C”) to the trustees of a settlement,
  - (b) the relief requirements are met, and
  - (c) P makes a claim under this section.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) does not apply to the disposal.
- (3) The disposal, and the acquisition by the trustees, are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) “The relief requirements” are—
- (a) that C meets the trading requirement (see section 236I) at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls,
  - (b) that the settlement meets the all-employee benefit requirement at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls (see sections 236J to 236L and subsection (5) of this section),
  - (c) that the settlement does not meet the controlling interest requirement (see section 236M) immediately before the beginning of the tax year in which the disposal occurs, but—
    - (i) it meets that requirement at the end of that tax year, and
    - (ii) if it met the requirement at an earlier time in that tax year (whether before or after the time of the disposal) it

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- continued to meet it throughout the remainder of that tax year,
- (d) that the limited participation requirement is met (see section 236N), and
  - (e) that this section does not apply in relation to any related disposal by P or a person connected with P which occurs in an earlier tax year.
- (5) For the purposes of subsection (4)(b)—
- (a) unless the settlement met the all-employee benefit requirement by virtue of section 236L (cases in which all-employee benefit requirement treated as met) at the time of the disposal, that section does not apply for the purposes of determining whether the settlement continues to meet that requirement after the disposal, and
  - (b) if, at the time of the disposal, the settlement met that requirement by virtue of section 236L and later continues to meet it otherwise than by virtue of that section, it may not again meet the requirement by virtue of that section.
- (6) A disposal in an earlier tax year is “related” to the disposal in question if—
- (a) both disposals are of ordinary share capital of the same company, or
  - (b) the disposal in the earlier tax year is of ordinary share capital of a company which is, or at the time of that disposal was, a member of the same group as the company whose ordinary share capital is the subject of the disposal in question.
- (7) A claim under this section must include—
- (a) information to identify the settlement,
  - (b) C’s name and the address of its registered office, and
  - (c) the date of the disposal and the number of shares disposed of.
- (8) Section 236O makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.

### **236I Trading requirement**

- (1) C meets the trading requirement if C is—
- (a) a trading company which is not a member of a group, or
  - (b) the principal company of a trading group.
- (2) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (3) “Trading group” means a group—
- (a) one or more of whose members carry on trading group activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.
- (4) In this section—
- “trading activities” means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;

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“trading group activities” means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.

- (5) For the purposes of determining whether C is a trading company or the principal company of a trading group—
- (a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
  - (b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity or a trading group activity.

### **236J All-employee benefit requirement**

- (1) A settlement meets the all-employee benefit requirement if the trusts of the settlement—
- (a) do not permit any of the settled property to be applied, at any time, otherwise than for the benefit of all the eligible employees on the same terms,
  - (b) do not permit the trustees at any time to apply any of the settled property—
    - (i) by creating a trust, or
    - (ii) by transferring property to the trustees of any settlement other than by an authorised transfer,
  - (c) do not permit the trustees at any time to make loans to beneficiaries of the trusts, and
  - (d) do not permit the trustees or any other person at any time to amend the trusts in a way such that the amended trusts would not comply with one or more of paragraphs (a) to (c).
- (2) Section 236K makes provision about the requirement in subsection (1)(a).
- (3) “Eligible employee” means—
- (a) if C meets the trading requirement by virtue of section 236I(1)(a), any individual who is employed by, or is an office-holder of, C, and
  - (b) if C meets the trading requirement by virtue of section 236I(1)(b), any individual who is employed by, or is an office-holder of, a relevant group company,
- but does not include an excluded participator.
- (4) But where—
- (a) C has ceased to meet the trading requirement or the trustees have ceased to hold any shares in C (or both), and
  - (b) a person was an eligible employee at any time during the period of two years ending immediately before that event (or, where both have occurred, the earlier of them),
- that person continues to be an “eligible employee”.
- (5) “Excluded participator” means—

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- (a) a person who is a participator in C, or, where C meets the trading requirement by virtue of section 236I(1)(b), in any relevant group company,
  - (b) any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being a disposition which but for section 13 or 13A of the Inheritance Tax Act 1984 (dispositions by close companies for benefit of employees or to employee-ownership trusts) would have been a transfer of value for the purposes of inheritance tax,
  - (c) any other person who has been a participator in any company mentioned in paragraph (a) or (b) at any time on or after the look-back date, or
  - (d) any person who is connected with any person within paragraph (a), (b) or (c).
- (6) The participators in a company who are referred to in subsection (5) do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, the company's share capital, and
  - (b) on a winding-up of the company would not be entitled to 5% or more of its assets.

(7) In this section—

“authorised transfer” means a transfer of property consisting of or including any ordinary share capital of a company (“the transferred company”) where—

- (a) the transferred company meets the trading requirement, and
- (b) the transfer is made to the trustees of a settlement which—
  - (i) meets the controlling interest requirement with respect to the transferred company immediately after the transfer, and
  - (ii) meets the all-employee benefit requirement with respect to the transferred company (ignoring section 236L),

and for this purpose references to “C” in sections 236I, 236M and 236T and this section are to be read as references to the transferred company,

“close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984 (see section 102 of that Act), and references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company,

“the look-back date” means the first day of the period of 10 years ending with whichever is later of—

- (a) 10 December 2013, and
- (b) the day on which any property first became comprised in the settlement, and

“relevant group company” means C or any other company which is a member of the group of which C is the principal company.

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- (8) In this section references to the settled property include references to any income arising from it.
- (9) See section 236L for cases where the all-employee benefit requirement is treated as met.

### **236K Further provision about the equality requirement**

- (1) The requirement in section 236J(1)(a) (“the equality requirement”) is not infringed by the trusts by reason only that they—
  - (a) permit the settled property to be applied, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee (and continued to be employed) for a period of 12 months, or such shorter period as the trusts may provide, starting with the time of death,
  - (b) prevent the settled property being applied for the benefit of persons who have not been eligible employees for a continuous period of 12 months or such shorter period as the trusts may provide,
  - (c) permit the trustees to comply with a written request from a person that the trustees do not apply any of the settled property for the benefit of that person, or
  - (d) prevent the settled property being applied for the benefit of all persons who are eligible employees by reason only that they are office-holders.
- (2) The equality requirement is not infringed by the trusts by reason only that, in addition to requiring the settled property to be applied for the benefit of all the eligible employees on the same terms, they also permit the settled property to be applied for charitable purposes.
- (3) Subject to subsections (1) and (2), the equality requirement is infringed by the trusts if they permit the settled property to be applied by reference to factors other than those mentioned in subsection (4).
- (4) The equality requirement is not infringed by the trusts by reason only that they permit the settled property to be applied for the benefit of all the eligible employees by reference to—
  - (a) an eligible employee’s remuneration,
  - (b) an eligible employee’s length of service, or
  - (c) hours worked by an eligible employee;but this is subject to subsections (5) and (6).
- (5) The equality requirement is infringed by the trusts if they permit any of the settled property to be applied on terms such that some (but not all) eligible employees receive no benefits (other than by virtue of subsection (1)(b), (c) and (d)).
- (6) If any of the settled property is applied by reference to more than one of the factors mentioned in subsection (4), the equality requirement is infringed unless—
  - (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and

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- (b) the total entitlement is the sum of those separate entitlements.
- (7) “Eligible employee” has the same meaning as in section 236J.
- (8) In this section, references to the settled property include references to any income arising from it.

**236L Cases in which all-employee benefit requirement treated as met**

- (1) A settlement which would not otherwise meet the all-employee benefit requirement at any time is treated as meeting that requirement at that time if—
  - (a) the settlement was created before 10 December 2013,
  - (b) on that date—
    - (i) section 86 of the Inheritance Tax Act 1984 (trusts for the benefit of employees) applied to the settled property,
    - (ii) the trustees held a significant interest in C, and
    - (iii) the settlement did not meet the all-employee benefit requirement (ignoring this section), and
  - (c) the trustees of the settlement do not, during the period of 12 months ending with the time in question, do any of the following—
    - (i) apply any of the settled property otherwise than for the benefit of all eligible employees on the same terms,
    - (ii) apply any of the settled property by creating a trust,
    - (iii) apply any of the settled property by transferring property to the trustees of any settlement other than by an authorised transfer, or
    - (iv) make loans to beneficiaries of the trusts of the settlement.
- (2) The trustees held a significant interest in C on 10 December 2013 if on that date—
  - (a) they—
    - (i) held 10% or more of the ordinary share capital of C, and
    - (ii) had powers of voting on all questions affecting C as a whole which, if exercised, would have yielded 10% or more of the votes capable of being exercised on them,
  - (b) they were entitled to 10% or more of the profits available for distribution to the equity holders of C,
  - (c) they would have been entitled, on a winding up of C, to 10% or more of the assets of C available for distribution to equity holders, and
  - (d) there were no provisions in any agreement or instrument affecting C’s constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) could cease to be satisfied without the consent of the trustees.

See section 236T for further provision relating to the holding of a significant interest.

- (3) Subsections (3) to (8) of section 236J apply for the purposes of this section.
- (4) The requirement in subsection (1)(c)(i) (“the behaviour requirement”) is not infringed by reason only that the trustees of the settlement—

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- (a) apply any of the settled property, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee (and continued to be employed) for a period of 12 months, or such shorter period as the trustees may determine, starting with the time of death,
  - (b) only apply the settled property for the benefit of persons who have been eligible employees for a continuous period of 12 months or such shorter period as the trustees may determine,
  - (c) comply with a written request from a person that the trustees do not apply any of the settled property for the benefit of that person, or
  - (d) have complied with the terms of the trusts of the settlement which prevent the settled property being applied for the benefit of some or all of the persons who are eligible employees by reason only that they are office-holders.
- (5) The behaviour requirement is not infringed by reason only that, in addition to applying any of the settled property for the benefit of all the eligible employees on the same terms, the trustees also apply any of it for charitable purposes.
- (6) Subject to subsections (4) and (5), the behaviour requirement is infringed by the trustees if they apply the settled property by reference to factors other than those mentioned in subsection (7).
- (7) The behaviour requirement is not infringed by the trustees applying the settled property for the benefit of all the eligible employees by reference to—
- (a) an eligible employee's remuneration,
  - (b) an eligible employee's length of service, or
  - (c) hours worked by an eligible employee;
- but this is subject to subsections (8) and (9).
- (8) The behaviour requirement is infringed if any of the settled property is applied by the trustees on terms such that some (but not all) eligible employees receive no benefits (other than as mentioned in subsection (4)(b), (c) and (d)).
- (9) If the trustees apply any of the settled property by reference to more than one of the factors mentioned in subsection (7), the behaviour requirement is infringed unless—
- (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.

### **236M Controlling interest requirement**

- (1) A settlement meets the controlling interest requirement if—
- (a) the trustees—
    - (i) hold more than 50% of the ordinary share capital of C, and
    - (ii) have powers of voting on all questions affecting C as a whole which, if exercised, would yield a majority of the votes capable of being exercised on them,

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- (b) the trustees are entitled to more than 50% of the profits available for distribution to the equity holders of C,
  - (c) the trustees would be entitled, on a winding up of C, to more than 50% of the assets of C available for distribution to equity holders, and
  - (d) there are no provisions in any agreement or instrument affecting C's constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) can cease to be satisfied without the consent of the trustees.
- (2) See section 236T for further provision relating to the controlling interest requirement.

### **236N Limited participation requirement**

- (1) The limited participation requirement is met if Conditions A and B are met.
- (2) Condition A is that there was no time in the period of 12 months ending immediately after the disposal mentioned in section 236H(1) when—
  - (a) P was a participator in C, and
  - (b) the participator fraction exceeded 2/5.
- (3) Condition B is that the participator fraction does not exceed 2/5 at any time in the period beginning with that disposal and ending at the end of the tax year in which it occurs.
- (4) But a time which falls in a period during which the participator fraction exceeded 2/5 is to be disregarded for the purposes of subsection (2)(b) and (3) if—
  - (a) that period lasts no more than 6 months, and
  - (b) the fraction exceeded 2/5 during that period by reason of events outside the reasonable control of the trustees.
- (5) “The participator fraction” means—

$$\frac{NP}{NE}$$

where—

NP is the sum of—

- (a) the number of persons who at the time in question are both—
  - (i) participators in C, and
  - (ii) employees of, or office-holders in, C, and
- (b) the number of other persons who at that time are both—
  - (i) employees of, or office-holders in, C or, if C is the principal company of a trading group, any member of the group, and
  - (ii) connected with persons within paragraph (a);

NE is the number of persons who at that time are employees of C or, if C is the principal company of a trading group, any member of the group.



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- (6) The participators in C who are referred to in subsections (2) and (5) do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, C's share capital, and
  - (b) on a winding-up of C would not be entitled to 5% or more of its assets.
- (7) In this section—
- (a) “participator” has the meaning given by section 454 of CTA 2010, and
  - (b) references to a participator in a company are, in the case of a company which is not a close company (within the meaning of Chapter 2 of Part 10 of that Act), to be construed as references to a person who would be a participator in the company if it were a close company.

### **236O No section 236H relief if disqualifying event in next tax year**

- (1) This section applies where—
- (a) a disposal is made in circumstances where paragraphs (a) and (b) of section 236H(1) are satisfied, and
  - (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the disposal occurs.
- (2) A “disqualifying event” occurs in relation to the disposal if and when—
- (a) C ceases to meet the trading requirement,
  - (b) the settlement ceases to meet the all-employee benefit requirement,
  - (c) the settlement ceases to meet the controlling interest requirement,
  - (d) the participator fraction exceeds  $\frac{2}{5}$ , or
  - (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit.
- (3) No claim for relief under section 236H may be made in respect of the disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (4) Any claim for relief under section 236H made in respect of the disposal before that day is revoked, and the chargeable gains and allowable losses of any person for any chargeable period are to be calculated as if that claim had never been made.
- (5) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (4) (regardless of any limitation on the time within which any adjustment may be made).
- (6) Section 236H(5) (restrictions on application of section 236L) applies for the purposes of subsection (2)(b).
- (7) Section 236N(4) applies for the purposes of subsection (2)(d) as it applies in relation to section 236N(2)(b) and (3).

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### **236P Events which trigger deemed disposal and reacquisition by trustees**

- (1) Where the trustees of a settlement acquire any ordinary share capital in a tax year in circumstances where section 236H applies, subsection (3) applies on the first occasion, after the end of the tax year following the tax year in which the acquisition occurs, when a disqualifying event occurs in relation to the acquisition.
- (2) A “disqualifying event” occurs in relation to the acquisition if and when—
  - (a) C ceases to meet the trading requirement,
  - (b) the settlement ceases to meet the all-employee benefit requirement,
  - (c) the settlement ceases to meet the controlling interest requirement,
  - (d) the participator fraction exceeds  $\frac{2}{5}$ , or
  - (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit.
- (3) The trustees are treated as having, immediately before the disqualifying event—
  - (a) disposed of any ordinary share capital of C held by the trustees which comprises shares acquired in circumstances where section 236H applied (and not subsequently disposed of and reacquired), and
  - (b) immediately reacquired that ordinary share capital, at its market value at that time.
- (4) For the purposes of subsection (2)(b)—
  - (a) unless the settlement met the all-employee benefit requirement at the time of the acquisition by virtue of section 236L, that section does not apply for the purposes of determining whether the settlement continues to meet that requirement after the acquisition, and
  - (b) if, at the time of the acquisition, the settlement met that requirement by virtue of section 236L and later continues to meet it otherwise than by virtue of that section, it may not again meet the requirement by virtue of that section.
- (5) Section 236N(4) applies for the purposes of subsection (2)(d) as it applies in relation to section 236N(2)(b) and (3).

### **236Q Relief for deemed disposals under section 71**

- (1) This section applies where—
  - (a) a deemed disposal arises under section 71(1) by reason of the trustees of a settlement (“the acquiring settlement”) becoming absolutely entitled to settled property as against the trustee of that settled property (“the transferring trustee”),
  - (b) that settled property consists of ordinary share capital of a company,
  - (c) the relief requirements in section 236H(4)(a) to (d) are met, and
  - (d) the transferring trustee makes a claim under this section.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) does not apply to the disposal.

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- (3) The deemed disposal and acquisition by the transferring trustee under section 71(1) are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) For the purposes of section 236P the trustees of the acquiring settlement are treated as acquiring the ordinary share capital from the transferring trustee, at the time of the deemed disposal, in circumstances where section 236H applies.
- (5) In applying sections 236H(4), 236I to 236P and 236T for the purposes of this section—
  - (a) references in those provisions to the settlement are to be read as references to the acquiring settlement, and
  - (b) references in those provisions to C are to be read as references to the company mentioned in subsection (1)(b).
- (6) A claim under this section must include—
  - (a) information to identify the acquiring settlement,
  - (b) the name of the company mentioned in subsection (1)(b) and the address of its registered office, and
  - (c) the date of the deemed disposal and the number of shares deemed to have been disposed of.
- (7) Section 236R makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.

### **236R No section 236Q relief if disqualifying event in next tax year**

- (1) This section applies where—
  - (a) a deemed disposal arises in circumstances where paragraphs (a) to (c) of section 236Q(1) are satisfied, and
  - (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the deemed disposal arises.
- (2) No claim for relief under section 236Q may be made in respect of the deemed disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (3) Any claim for relief under section 236Q made in respect of the deemed disposal before that day is revoked, and the chargeable gains and allowable losses of any person for any chargeable period are to be calculated as if that claim had never been made.
- (4) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (3) (regardless of any limitation on the time within which any adjustment may be made).
- (5) “Disqualifying event” is to be construed in accordance with subsections (2), (6) and (7) of section 236O except that—

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- (a) references in those subsections to the disposal are to be read as references to the deemed disposal, and
- (b) in applying sections 236I to 236P and 236T for this purpose—
  - (i) references in those provisions to the settlement are to be read as references to the acquiring settlement (within the meaning of section 236Q(1)), and
  - (ii) references in those provisions to C are to be read as references to the company mentioned in section 236Q(1)(b).

### **236S Identification of shares where section 236H or 236Q applies**

- (1) This section applies where the trustees of a settlement hold—
  - (a) shares which were—
    - (i) acquired in circumstances where section 236H applied, or
    - (ii) the subject of a deemed acquisition under section 71(1) in circumstances where section 236Q applied,
 and not subsequently disposed of and reacquired (“EOT exempt shares”), and
  - (b) other shares which, but for section 104(4A), would be shares of the same class as those shares.
- (2) If the trustees dispose of some, but not all, of the shares so held, they may determine what proportion of the shares disposed of are EOT exempt shares (up to the number of such shares held).
- (3) For the purposes of this section shares in a company are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.
- (4) Nothing in subsection (2) applies in relation to a disposal by virtue of section 236P(3).

### **236T Further provision about significant and controlling interests**

- (1) This section applies for the purposes of—
  - (a) section 236L(2) (trustees hold a significant interest in C), and
  - (b) section 236M (controlling interest requirement).
- (2) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies as it applies for the purposes of the provisions mentioned in section 157(1) of that Act.
- (3) The trustees are to be treated, for the purposes of section 236L(2)(b) or 236M(1)(b), as entitled to dividends on shares even if the trustees are required, or permitted, by the trusts of the settlement to waive their entitlement to those dividends.
- (4) In determining whether section 236L(2)(d) or 236M(1)(d) applies, ignore any provision of—
  - (a) a mortgage or charge (or, in Scotland, a charge or security) granted by the trustees to a third party to secure any debt, or
  - (b) an agreement in respect of a loan made to the trustees by a third party,

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which confers any entitlement on the third party in the event of a default by the trustees in performing their obligations in relation to that debt or loan.

(5) In this section—

“third party” means a person other than—

- (a) C or a member of a group of which C is the principal company,
- (b) a person who is, or has at any time in the preceding 12 months been, a participator in C or in a member of such a group, or
- (c) a person connected with a person within paragraph (b);

“close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984 (see section 102 of that Act), and a reference to a participator in a company is, in the case of a company which is not a close company, to be construed as a reference to a person who would be a participator in the company if it were a close company.

### **236U Interpretation of sections 236H to 236U**

(1) In sections 236H to 236T and this section—

“company” has the meaning given by section 170(9);

“ordinary share capital” has the meaning given by section 1119 of CTA 2010;

“trade” means any trade which is conducted on a commercial basis and with a view to the realisation of profits.

(2) In those sections—

- (a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with section 170, and
- (b) references to a group are to be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.

(3) In determining whether a person is connected with another for the purposes of those sections, section 286 applies as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.”