



# Finance Act 2016

## 2016 CHAPTER 24

### PART 1

#### INCOME TAX

##### *Transactions in securities*

### **33 Transactions in securities: company distributions**

- (1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.
- (2) In section 684 (person liable to counteraction), in subsection (1)—
  - (a) in the opening words, after “a person” insert “ (“the party”) ”;
  - (b) in paragraph (c), omit “the person in being a party to”;
  - (c) in paragraph (d), for “the person” substitute “ the party or any other person ”.
- (3) In that section, in subsection (2)—
  - (a) in paragraph (c), omit the final “and”;
  - (b) after paragraph (d) insert—
    - “(e) a repayment of share capital or share premium, and
    - (f) a distribution in respect of securities in a winding up.”
- (4) In section 685 (receipt of consideration in connection with distribution by or assets of close company)—
  - (a) in subsection (2)—
    - (i) in the opening words, for “the person” substitute “ a relevant person ”;
    - (ii) in the words after paragraph (c), after “and” insert “ the relevant person ”;
  - (b) in subsection (3)—
    - (i) in paragraph (a), for “the person” substitute “ a relevant person ”;
    - (ii) in paragraph (c), for “the person” substitute “ the relevant person ”;
  - (c) after subsection (3) insert—

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“(3A) In subsections (2) and (3) “relevant person” means—

- (a) the party, or
- (b) any person other than the party in relation to whom the condition in section 684(1)(d) is met.”
- (d) omit subsection (6);
- (e) after subsection (7) insert—

“(7A) The references in subsection (4)(a)(i) and (ii) to assets do not include assets shown to represent return of sums paid by subscribers on the issue of securities merely because the law of the country in which the company is incorporated allows assets of that description to be available for distribution by way of dividend.

(7B) The references in subsections (4)(a)(i) and (5)(a) to assets which are available for distribution by way of dividend by the company include assets which are available for distribution to the company by way of dividend by any other company it controls.”

(5) In section 686 (excluded circumstances: fundamental change of ownership)—

- (a) in subsection (1)(a), for the words from “the person” to “party”)” substitute “the party”;
- (b) for subsections (2) to (5) substitute—

“(2) There is a fundamental change of ownership of the close company if, as a result of the transaction or transactions in securities, the condition in subsection (3) is met.

(3) The condition in this subsection is that the original shareholder or original shareholders taken together with any associate or associates—

- (a) do not directly or indirectly hold more than 25% of the ordinary share capital of the close company,
- (b) do not directly or indirectly hold shares in the close company carrying an entitlement to more than 25% of the distributions which may be made by the close company, and
- (c) do not directly or indirectly hold shares in the close company carrying more than 25% of the total voting rights in the close company.

(4) In this section “original shareholder” means a person who, immediately before the transaction in securities (or the first of the transactions in securities), held any ordinary share capital of the close company.

(5) For the purposes of this section, shares of or share capital in the close company which are held by a person controlled by an original shareholder, or by two or more original shareholders taken together, count as shares or share capital held by that original shareholder or those original shareholders.”

(6) In section 687 (income tax advantage)—

- (a) in subsection (1), in the opening words, for “the person” substitute “a person”;

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- (b) in subsection (2)—
  - (i) after “to the person” insert “ or an associate of the person ”;
  - (ii) for “the relevant consideration is received” substitute “ Condition A or B in section 685 is met ”.
- (7) In section 713 (interpretation), at the appropriate place insert—
 

““associate” is to be construed in accordance with section 681DL, but as if subsection (4) of that section also included, as persons associated with each other, a person as trustee of a settlement and an individual, where one or more beneficiaries of the settlement are connected or associated with the individual;”.
- (8) The amendments made by this section have effect in relation to—
  - (a) a transaction occurring on or after 6 April 2016, or
  - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April 2016 in consequence of—
  - (a) a transaction occurring before that date, or
  - (b) a series of transactions all of which occur before that date.
- (10) Where—
  - (a) before 6 April 2016 a person provides particulars to the Commissioners for Her Majesty's Revenue and Customs under section 701 of ITA 2007 in respect of a transaction or transactions,
  - (b) on the basis of Chapter 1 of Part 13 of ITA 2007 as it has effect apart from this section, notification is given under section 701 of that Act that no counteraction notice ought to be served about the transaction or transactions,
  - (c) the transaction, or any one or more of the transactions, occurs on or after 6 April 2016, and
  - (d) the person would, but for the notification, be liable for counteraction of an income tax advantage from the transaction or transactions under Chapter 1 of Part 13 of ITA 2007 as amended by this section,

the notification is void and section 702(2) of ITA 2007 does not apply in relation to the transaction or transactions.

### **34 Transactions in securities: procedure for counteraction of advantage**

- (1) Chapter 1 of Part 13 of ITA 2007 (transactions in securities) is amended as follows.
- (2) For section 695 (preliminary notification) substitute—

#### **“695 Notice of enquiry**

- (1) An officer of Revenue and Customs may enquire into a transaction or transactions if—
  - (a) the officer has reason to believe that section 684 (person liable to counteraction of income tax advantage) may apply to a person (“the taxpayer”) in respect of the transaction or transactions, and
  - (b) the officer notifies the taxpayer of his intention to do so.

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- (2) The notification may be given at any time not more than 6 years after the end of the tax year to which the income tax advantage in question relates.”
- (3) Omit sections 696 and 697 (opposed notifications).
- (4) In section 698 (counteraction notices), for subsection (1) substitute—
  - “(1) If on an enquiry under section 695 an officer of Revenue and Customs determines that section 684 applies to the taxpayer, the income tax advantage in question is to be counteracted by adjustments, unless the officer is of the opinion that no counteraction is required.”
- (5) In that section, for subsection (5) substitute—
  - “(5) An assessment may be made in accordance with a counteraction notice at any time (without regard to any time limit on making the assessment that would otherwise apply).”
- (6) After that section insert—

**“698A No-counteraction notices**

- (1) If on an enquiry under section 695 an officer of Revenue and Customs is of the opinion that no counteraction is required, the officer must serve notice on the person (a “no-counteraction notice”) stating that no counteraction is required and why.
- (2) The taxpayer may apply to the tribunal for a direction requiring an officer of Revenue and Customs to issue one of the following within a specified period—
  - (a) a counteraction notice;
  - (b) a no-counteraction notice.
- (3) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (4) The tribunal must give the direction applied for unless satisfied that there are reasonable grounds for not serving either a counteraction notice or a no-counteraction notice within a specified period.”
- (7) In section 684 (person liable to counteraction), for subsection (4) substitute—
  - “(4) This section is subject to no-counteraction notices issued under section 698A.”
- (8) The amendments made by this section have effect in relation to—
  - (a) a transaction occurring on or after 6 April 2016, or
  - (b) a series of transactions any one or more of which occurs on or after that date.
- (9) Accordingly, Chapter 1 of Part 13 of ITA 2007 has effect without the amendments made by this section in relation to a tax advantage obtained on or after 6 April 2016 in consequence of—
  - (a) a transaction occurring before that date, or
  - (b) a series of transactions all of which occur before that date.

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## 35 Distributions in a winding up

- (1) In Chapter 3 of Part 4 of ITTOIA 2005 (dividends and other distributions from UK resident companies), after section 396A insert—

### “396B Distributions in a winding up

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in the winding up of a UK resident company is a distribution of the company if—
  - (a) Conditions A to D are met, and
  - (b) the distribution is not excluded (see subsection (7)).
- (2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.
- (3) Condition B is that the company—
  - (a) is a close company when it is wound up, or
  - (b) was a close company at any time in the period of two years ending with the start of the winding up.
- (4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—
  - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,
  - (b) the individual is a partner in a partnership which carries on such a trade or activity,
  - (c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—
    - (i) carries on such a trade or activity, or
    - (ii) is connected with a company which carries on such a trade or activity, or
  - (d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
- (5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—
  - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
  - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.
- (7) A distribution to an individual is excluded if or to the extent that—
  - (a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or
  - (b) the distribution is a distribution of irredeemable shares.

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(8) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

“effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992;

“participator” has the meaning given by section 454 of CTA 2010.

(9) For the purposes of this section, an individual has at least a 5% interest in a company if—

- (a) at least 5% of the ordinary share capital of the company is held by the individual, and
- (b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.

(10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).”

(2) In Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), after section 404 insert—

**“404A Distributions in a winding up**

(1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in a winding up of a non-UK resident company is a dividend of the company if—

- (a) Conditions A to D are met, and
- (b) the distribution is not excluded (see subsection (7)).

(2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.

(3) Condition B is that the company—

- (a) is a close company when it is wound up, or
- (b) was a close company at any time in the period of two years ending with the start of the winding up.

(4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—

- (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,
- (b) the individual is a partner in a partnership which carries on such a trade or activity,
- (c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—

- (i) carries on such a trade or activity, or

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- (ii) is connected with a company which carries on such a trade or activity, or
  - (d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
- (5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—
  - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
  - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.
- (7) A distribution to an individual is excluded if or to the extent that—
  - (a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or
  - (b) the distribution is a distribution of irredeemable shares.
- (8) In this section—
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;
  - “close company” includes a company which would be a close company if it were a UK resident company;
  - “effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992;
  - “participator” has the meaning given by section 454 of CTA 2010.
- (9) For the purposes of this section, a person has at least a 5% interest in a company if—
  - (a) at least 5% of the ordinary share capital of the company is held by the individual, and
  - (b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.
- (10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).”
- (3) The amendments made by this section have effect in relation to distributions made on or after 6 April 2016.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)