



Finance Act 2016

2016 CHAPTER 24

PART 1

INCOME TAX

Transactions in securities

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,

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- (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.
 - (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—

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“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
 - (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—

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“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.

Changes to legislation:

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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\(3\)](#)