

# Bill 6

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## CONTENTS

### PART 1

#### COMPANY DISTRIBUTIONS

##### CHAPTER 1

###### INTRODUCTION

- 1 Overview of Part [j52091]

##### CHAPTER 2

#### MATTERS WHICH ARE DISTRIBUTIONS

###### *Overview of Chapter*

- 2 Overview of Chapter [j52091a]
- 3 Priority of negative rules [j52091b]

###### *Meaning of "distribution"*

- 4 Meaning of "distribution" [j52092]
- 5 Provisions related to paragraphs A to H of the section 4(1) list [j5209table]

###### *Distributions, other than dividends, in respect of shares*

- 6 Exceptions for certain transfers of assets or liabilities between a company and its members [j52094b]

###### *Redeemable share capital*

- 7 Redeemable share capital [j52092c]

###### *Securities issued otherwise than for new consideration*

- 8 Cases where the issue is partly for new consideration [j52097]

*Distributions in respect of non-commercial securities*

- 9 Meaning of “non-commercial securities” [j52092e]
- 10 The principal secured: non-commercial securities [j52092g]
- 11 Consideration exceeding amount of principal secured: modification of section 10 [j52092d]

*Exceptions to section 11*

- 12 Security linked to shares: exclusion of section 11 [j5209A]
- 13 Meaning of “qualifying index” in section 12 [j5209a1]
- 14 Meaning of “associated company” in section 12 [j5209A2]
- 15 Hedging arrangements [j5209B]
- 16 Exception to section 15 [j5209B1]
- 17 Meaning of “hedging arrangements” [j5209B3]

*Distributions in respect of special securities*

- 18 Meaning of “special securities” [j52093]
- 19 Meaning of “equity note” in section 18 [j520933]
- 20 Section 18: other interpretation [j520932]
- 21 The principal secured: special securities [j52092f]
- 22 Alternative finance arrangements [j554]

*Transfers of assets or liabilities treated as distributions*

- 23 Transfers of assets or liabilities treated as distributions [j52094]
- 24 Section 23: exceptions [j52094a]

*Bonus issues following repayment of share capital*

- 25 Bonus issues following repayment of share capital treated as distributions [j5210]

*Interpretation of references to repayment of share capital*

- 26 Premiums paid on redemption of share capital [j52112]
- 27 Share capital issued at a premium representing new consideration [j52112a]
- 28 Distributions following a bonus issue [j52111]
- 29 Cap on amount of distributions affected by section 28 [j52111a]
- 30 Certain payments connected with exempt distributions [j5214B62]

**CHAPTER 3****MATTERS WHICH ARE NOT DISTRIBUTIONS***Introduction*

- 31 Overview of Chapter [j52096a]

*Distributions in a winding up*

- 32 Distributions in respect of share capital in a winding up [j52096]

*Distribution as part of a cross-border merger*

- 33 Distribution as part of a cross-border merger [j5209m]

*Payments of interest*

- 34 Interest etc paid in respect of certain securities [j5212]

*Purchase of own shares*

- 35 Purchase by unquoted trading company of own shares [j5219]  
36 Requirements as to residence [j5220]  
37 Requirement as to period of ownership [j52202]  
38 Determining the period of ownership [j52202a]  
39 Reduction of seller's interest as shareholder [j5221]  
40 Section 39: effect of entitlement to profits [j52212]  
41 Requirements where purchasing company is a member of a group [j5222]  
42 Determining whether interests as shareholders in a group are substantially reduced [j5222a]  
43 Section 42: effect of entitlement to profits [j52222]  
44 Other requirements [j5223]  
45 Relaxation of requirements in certain cases [j5224]

*Purchase of own shares: supplementary*

- 46 Advance clearance of payments by Commissioners [j5225]  
47 Advance clearance: supplementary [j5225a]  
48 Purchase of own shares: returns [j52261]  
49 Information about schemes etc [j52262]  
50 Information about the person for whom a payment is received [j52263]  
51 Meaning of "group" and "51% subsidiary" in sections 35 to 51 [j52223]  
52 Sections 35 to 51: other interpretation [j5229]

*Stock dividends*

- 53 Stock dividends [j5230]  
54 Application of section 53 where bonus share capital is converted etc [j5249]  
55 "Bonus share capital" and "in lieu of a cash dividend" [j5251]  
56 Share capital to which section 53 applies: returns [j52501]  
57 Return periods [j52503]  
58 Power to require further information [j52502]

*Building society payments*

- 59 Building society payments [j5477a]

*Industrial and provident society payments*

- 60 Industrial and provident societies: interest and share dividends [j2021a]  
61 Dividend or bonus relating to transactions [j2021]

*Payments made by UK agricultural or fishing co-operatives*

- 62 UK agricultural or fishing co-operatives: interest and share dividends [j2021b]  
63 Meaning of "UK agricultural or fishing co-operative" [j2021C]

*Supplementary provisions*

- 64 Associated persons [j5227]
- 65 Associated persons: trustees [j52271]
- 66 Associated persons: personal representatives [j52272]
- 67 Connected persons [j52282]
- 68 Section 67: supplementary [j5228]

**CHAPTER 4**

## SPECIAL RULES FOR DISTRIBUTIONS MADE BY CERTAIN COMPANIES

*Close companies*

- 69 Certain expenses of close companies treated as distributions [j5418]
- 70 Exception for benefits treated as employment income etc [j54181]
- 71 Exception for certain transfers between UK resident companies [j54183]
- 72 Extension of references to close companies and participators [j54182]

*Companies carrying on a mutual business*

- 73 Companies carrying on a mutual business [j54901]
- 74 Distributions out of surpluses not charged to tax etc [j54903]

*Companies not carrying on a business*

- 75 Companies not carrying on a business [j54902]

*Members of a 90% group*

- 76 Members of a 90% group [j52541a]

**CHAPTER 5**

## DEMERGERS

*Introduction*

- 77 Key terms etc [j5214x]
- 78 Purpose of provisions about demergers [j5213a]

*Exempt distributions*

- 79 Exempt distributions [j5213x]
- 80 Transfer of shares in subsidiaries to members [j5213z]
- 81 Transfer by distributing company and issue of shares by transferee company [j5213]
- 82 Division of business in a cross-border transfer [j5213a1]
- 83 “The distributing company” [j5213zb]
- 84 Meaning of “relevant company” [j5213za]

*Exemption by virtue of section 80 or 81: conditions*

- 85 General conditions [j52132]
- 86 Conditions for distributions within section 80(a) [j52133]

- 87 Conditions for distributions within section 81(1) [j52134]
- 88 Cases where condition K does not apply [j52134a]
- 89 Conditions to be met if the distributing company is a 75% subsidiary [j52135]

*Chargeable payments*

- 90 Chargeable payments connected with exempt distributions [j5214B5]
- 91 Chargeable payments not deductible in calculating profits [j5214B6]
- 92 Meaning of “chargeable payment” [j5214B65]
- 93 Meaning of “chargeable payment”: unquoted companies [j5214B63]
- 94 Meaning of “company concerned in an exempt distribution” [j5214B64]

*Advance clearance*

- 95 Advance clearance of distributions [j5215]
- 96 Advance clearance of payments [j5215a]
- 97 Requirements relating to applications for clearance [j52152a]
- 98 Decision of the Commissioners or Special Commissioners [j52152b]

*Information and returns*

- 99 Exempt distributions: returns [j52161]
- 100 Payments falling within section 80(a) or 81(1) [j52171]
- 101 Chargeable payments etc: returns [j52162]
- 102 Chargeable payments etc: information [j52172]
- 103 Information about the existence of schemes etc [j52173]
- 104 Information about person for whom a payment is received [j52174]

*Interpretation of Chapter*

- 105 Meaning of “unquoted company” [j5218b5a]
- 106 Other definitions etc [j5218b6]

**CHAPTER 6**

INFORMATION AND RETURNS: FURTHER PROVISIONS

*General duties to provide information*

- 107 Qualifying distributions: right to request a statement [j52341]
- 108 Non-qualifying distributions etc: returns and information [j52342]
- 109 Non-qualifying distributions etc: additional information [j52343]

*Companies and nominees required to provide tax certificates*

- 110 Company distributing dividend or interest: duty to provide tax certificates [j5234a1]
- 111 Duties of nominees [j5234a2]
- 112 Meaning of “tax certificate” etc [j5234a3]
- 113 Penalties [j5234a4]

*Powers to make regulations*

- 114 Power to modify or replace sections 108 and 109 [j5253]

115 Alternative means of compliance with sections 110 and 111 [j5234a5]

## CHAPTER 7

### INTERPRETATION OF PART

- 116 Arrangements between companies [j52543a]
- 117 “In respect of shares” [j52541b]
- 118 “In respect of securities” [j52541c]
- 119 “New consideration” [j52542]
- 120 References to married persons, or civil partners, living together [j51011]
- 121 Other interpretation [j52543]

## PART 2

### GENERAL

## CHAPTER 1

### TAX CREDITS, FRANKED INVESTMENT INCOME AND QUALIFYING DISTRIBUTIONS

- 122 Overview of Chapter [j5231a]
- 123 Tax credits for certain recipients of qualifying distributions [j5231]
- 124 Recovery of overpaid tax credit etc [j52521]
- 125 Section 124: supplementary [j52522]
- 126 Meaning of “franked investment income” [j5fii]
- 127 Meaning of “qualifying distribution” [j514]

- 
- Schedule 1 – Minor and consequential amendments [j2adis]
  - Schedule 2 – Transitionals and savings [j3dis]
  - Part 1 – COMPANY DISTRIBUTIONS

## PART 1

### COMPANY DISTRIBUTIONS

#### CHAPTER 1

##### INTRODUCTION

### 1 Overview of Part [j52091]

- (1) Chapters 2 to 5 contain provision about what is, and what is not, a distribution.

[Origin: Drafting.](#)

- (2) Chapter 5 (demergers) includes provision that charges income tax, or applies the charge to corporation tax on income, in relation to certain payments.

[Origin: Drafting.](#)

- (3) Chapters 2 to 5 also include—

- (a) provision about the persons to whom certain distributions are treated as made (see sections 23(2) and 69(3)),
- (b) provision about how the amount of certain distributions is determined (see sections 7, 8, 23(2) and 69(3)),
- (c) other special rules about distributions made by certain companies (see Chapter 4), and
- (d) provision about returns and information (see sections 48 to 50, 56 to 57 and 99 to 104).

[Origin: Drafting.](#)

- (4) Chapter 6 contains provision of more general application about returns and information relating to distributions.

[Origin: drafting.](#)

- (5) Section 152(3)(b) of FA 1995 enables regulations under that section to include provision which modifies the following in relation to open-ended investment companies, or payments falling to be treated as the distributions of such companies—

- (a) Chapter 2,
- (b) sections 32 to 53,
- (c) sections 64 to 68,
- (d) Chapter 5.

[Origin: Drafting.](#)

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**CHAPTER 2****MATTERS WHICH ARE DISTRIBUTIONS***Overview of Chapter***2 Overview of Chapter [j52091a]**

- (1) Sections 4 to 25 are about the meaning of “distribution” in the Corporation Tax Acts.

*Origin: Drafting.*

- (2) In particular –
- (a) section 4 contains a list (“the section 4(1) list”) of the matters which are distributions, and
  - (b) sections 6 to 25 contain provisions supplementing the paragraphs of that list.

*Origin: Drafting.*

- (3) The table in section 5 lists some of the main provisions which explain, supplement or limit the paragraphs of the section 4(1) list.

*Origin: Drafting.*

- (4) Sections 26 to 30 are about the meaning of “repayment of share capital”.

*Origin: Drafting.*

**3 Priority of negative rules [j52091b]**

- (1) The provisions of this Chapter are subject to any express exceptions.

*Origin: ICTA s.209(1).*

- (2) For exceptions to the provisions of this Chapter see particularly –
- (a) Chapter 3 (matters which are not distributions),
  - (b) section 79 (exempt distributions), and
  - (c) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society’s business to a company: qualifying benefits),
- and see also the table in section 5.

*Origin: Drafting.*

*Meaning of "distribution"***4 Meaning of “distribution” [j52092]**

- (1) In the Corporation Tax Acts “distribution”, in relation to any company, means anything falling within any paragraph of the following list.

A. Any dividend paid by the company, including a capital dividend.

B. Any other distribution out of assets of the company in respect of shares in the company, except—

- (a) however much (if any) of the distribution represents repayment of capital on the shares, and
- (b) if the company receives any new consideration for the distribution, however much of the distribution is (when it is made) equal in amount or value to the new consideration.

For the purposes of this paragraph it does not matter whether the distribution is in cash or not.

C. Any redeemable share capital issued by the company—

- (a) in respect of shares in, or securities of, the company, and
- (b) otherwise than for new consideration (see sections 7(1) and 119).

D. Any security issued by the company—

- (a) in respect of shares in, or securities of, the company, and
- (b) otherwise than for new consideration (see sections 8(1) and 119).

E. Any interest or other distribution out of assets of the company in respect of securities of the company which are non-commercial securities (as defined in section 9), except—

- (a) however much (if any) of the distribution represents the principal secured by the securities, and
- (b) however much (if any) of the distribution represents a reasonable commercial return for the use of the principal.

F. Any interest or other distribution out of assets of the company in respect of securities of the company which are special securities (as defined in section 18), except—

- (a) however much (if any) of the distribution represents the principal secured by the securities, and
- (b) however much (if any) of the distribution falls within paragraph E.

G. Any amount treated as a distribution by section 23 (transfers of assets or liabilities).

H. Any amount treated as a distribution by section 25 (bonus issues following repayment of share capital).

[Origin: ICTA s.209\(2\); drafting.](#)

- (2) In the Corporation Tax Acts “distribution”, in relation to a close company, also includes anything treated as a distribution by section 69 (certain expenses of close companies treated as distributions).

[Origin: ICTA s.418\(1\).](#)

- (3) See also section 76 (which extends the meaning of “distribution” in relation to members of a 90% group).

*Origin: Drafting.*

**5 Provisions related to paragraphs A to H of the section 4(1) list [j5209table]**

The following table lists, for each paragraph of the section 4(1) list –

- (a) some of the main provisions that explain or supplement it, and
- (b) some of the main provisions that limit it.

<i>Paragraph of the section 4(1) list</i>	<i>Explained or supplemented by</i>	<i>Limited by</i>
A (dividends).		Section 59 (building society payments).  Sections 60(2) and 62(2) (dividend paid by industrial and provident society or UK agricultural or fishing co-operative).
B (other distributions in respect of shares).	Sections 26 to 30 (meaning of “repayment of share capital”).  Section 117(1) (extends meaning of “in respect of shares in the company”).	Section 6 (exception for certain transfers of assets and liabilities).
C (redeemable share capital).	Section 7.  Section 117(1).  Section 118(1) (extends meaning of “in respect of securities of the company”).	Section 53(3)(a) (stock dividends).
D (securities issued otherwise than for new consideration).	Section 8.  Section 117(1).  Section 118(1).	
E (distributions in respect of non-commercial securities).	Sections 9 to 17.  Section 118(1).	

<i>Paragraph of the section 4(1) list</i>	<i>Explained or supplemented by</i>	<i>Limited by</i>
F (distributions in respect of special securities).	Sections 18 to 21.  Section 118(1).	Section 22 (alternative finance arrangements).  Section 34 (interest etc paid in respect of certain securities).
G (transfers of assets or liabilities).	Section 23.	
H (bonus issues following repayment of share capital).	Section 25.	Section 53(3)(b)(i) (stock dividends).

Origin: Drafting.

*Distributions, other than dividends, in respect of shares*

**6 Exceptions for certain transfers of assets or liabilities between a company and its members [j52094b]**

- (1) No transfer of assets (other than cash) or of liabilities between one company and another constitutes, or is treated as giving rise to, a distribution by virtue of paragraph B of the section 4(1) list if –
- both the companies are UK resident,
  - neither of them is a 51% subsidiary of a non-UK resident company, and
  - the two companies are not under common control, either at the time of the transfer or as a result of it.

Origin: ICTA s.209(6).

- (2) An amount that would apart from section 24(1) be a distribution under section 23(2) (certain cases where the company and the member receiving the benefit are linked to each other and are both UK resident) does not constitute a distribution by virtue of paragraph B of the section 4(1) list.

Origin: ICTA s.209(5).

- (3) In this section –
- “under common control” means under the control of the same person or persons, and
- “control” is to be read in accordance with [section 416(2) to (6) of ICTA].

Origin: ICTA s.209(6).

*Redeemable share capital*

**7 Redeemable share capital [j52092c]**

- (1) If –

- (a) a company issues redeemable share capital, and
- (b) the issue is partly (but not wholly) for new consideration, only the part of the share capital that is not properly referable to the new consideration falls within paragraph C of the section 4(1) list.

Origin: ICTA s.209(2).

- (2) In determining for the purposes of paragraph C of the section 4(1) list the amount of the distribution constituted by the issue of any redeemable share capital, the capital is taken at the value given by subsection (3).

Origin: ICTA s.209(8).

- (3) The value is the amount of the share capital plus the amount of any premium payable—
  - (a) on redemption,
  - (b) in a winding up, or
  - (c) in any other circumstances.

Origin: ICTA s.209(8).

*Securities issued otherwise than for new consideration*

**8 Cases where the issue is partly for new consideration [j52097]**

- (1) If—
  - (a) a company issues a security, and
  - (b) the issue is partly (but not wholly) for new consideration, only the part of the security that is not properly referable to the new consideration falls within paragraph D of the section 4(1) list.

Origin: ICTA s.209(2).

- (2) In determining for the purposes of paragraph D of the section 4(1) list the amount of the distribution constituted by the issue of any security, the security is taken at the value given by subsection (3).

Origin: ICTA s.209(8).

- (3) The value is the amount of the principal secured, including any premium payable—
  - (a) at maturity,
  - (b) in a winding up, or
  - (c) in any other circumstances.

Origin: ICTA s.209(8).

*Distributions in respect of non-commercial securities*

**9 Meaning of “non-commercial securities” [j52092e]**

For the purposes of this Chapter securities of a company are non-commercial securities if the consideration given by the company under the securities for the use of the principal secured by them represents more than a reasonable commercial return for the use of that principal.

Origin: ICTA s.209(2).

## 10 The principal secured: non-commercial securities [j52092g]

- (1) No amount is to be regarded for the purposes of paragraph E of the section 4(1) list as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

This is without prejudice to section 121(6).

Origin: ICTA s.209(3).

- (2) Subsections (3) and (4) apply if any security of a company is issued at a premium representing new consideration (but see also section 11).

Origin: ICTA s.209(3A).

- (3) In relation to a distribution in respect of the security, the reference in paragraph E of the section 4(1) list to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of –
  - (a) however much of the distribution represents the principal, and
  - (b) however much of it represents the premium.

Origin: ICTA s.209(3A).

- (4) In relation to a distribution in respect of the security, the reference in paragraph E of the section 4(1) list to however much of the distribution represents a reasonable commercial return for the use of the principal secured by the security is to be read as a reference to the sum of –
  - (a) however much of the distribution represents a reasonable commercial return for the use of the principal, and
  - (b) however much of it represents (when regard is had to the extent to which distributions represent the premium) a reasonable commercial return for the use of the premium.

Origin: ICTA s.209(3A).

## 11 Consideration exceeding amount of principal secured: modification of section 10 [j52092d]

- (1) This section applies if –
  - (a) a company issues a security, and
  - (b) the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security.

Origin: ICTA s.209(3AA).

- (2) The amount of the principal is treated for the purposes of paragraph E of the section 4(1) list as increased to the amount of that new consideration.

Origin: ICTA s.209(3AA).

- (3) Section 10(3) and (4) does not have effect in relation to the security.

Origin: ICTA s.209(3AA).

- (4) This section is subject to sections 12 and 15.

Origin: ICTA s.209(3AA).

*Exceptions to section 11*

**12 Security linked to shares: exclusion of section 11 [j5209A]**

- (1) Section 11 does not apply in relation to a security issued by a company (“the issuing company”) if the security is linked to shares in one or more companies each of which is –
- (a) the issuing company, or
  - (b) an associated company of the issuing company.
- But this is subject to subsection (3).

Origin: ICTA s.209A(1).

- (2) For the purposes of subsection (1) a security is linked to shares if it reflects to a significant extent –
- (a) dividends or other distributions in respect of the shares, or
  - (b) fluctuations in the value of the shares.

Origin: ICTA s.209A(1).

- (3) Subsection (1) does not prevent section 11 from applying in relation to a security if –
- (a) the issuing company is a bank or securities house,
  - (b) the issuing company issues the security in the ordinary course of its business, and
  - (c) the security reflects dividends or other distributions in respect of the shares mentioned in subsection (1), or fluctuations in the value of those shares, only because it reflects fluctuations in a qualifying index.

Origin: ICTA s.209A(2).

- (4) In this section –
- “bank” has the meaning given by section 840A of ICTA, and
- “securities house” means any person –
- (a) who is authorised for the purposes of FISMA 2000, and
  - (b) whose business consists wholly or mainly of dealing as principal in financial instruments (within the meaning of section 984 of ITA 2007).

Origin: ICTA s.209A(4).

**13 Meaning of “qualifying index” in section 12 [j5209a1]**

- (1) In section 12 “qualifying index” means an index which meets the conditions in subsections (2) and (3).

Origin: ICTA s.209A(3).

- (2) The underlying subject matter of the index must include both –
- (a) shares in one or more companies falling within paragraph (a) or (b) of section 12(1), and
  - (b) shares in one or more companies falling within neither of those paragraphs.

Origin: ICTA s.209A(3).

- (3) Shares in companies falling within neither paragraph (a) nor paragraph (b) of section 12(1) must represent a significant proportion of the market value of the underlying subject matter of the index.

Origin: ICTA s.209A(3).

#### 14 Meaning of “associated company” in section 12 [j5209A2]

- (1) For the purposes of section 12 a company is an “associated company” of another at any time when –
  - (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.

Origin: ICTA s.209A(5).

- (2) For the purposes of subsection (1) a person controls a company if the person has power to secure that the affairs of the company are conducted in accordance with the person’s wishes, and has that power –
  - (a) by holding shares in the company or any other company,
  - (b) by possessing voting power in relation to the company or any other company, or
  - (c) by virtue of any powers conferred by –
    - (i) the articles of association of the company or any other company, or
    - (ii) any other document regulating the company or any other company.

Origin: ICTA s.209A(6).

- (3) Shares held by a company, and any voting power or other powers arising from the shares, must be ignored for the purposes of subsection (2) if –
  - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
  - (b) the shares are not assets of an insurance company’s long-term insurance fund.

Origin: ICTA s.209A(7).

#### 15 Hedging arrangements [j5209B]

- (1) Section 11 does not at a given time apply in relation to a security issued by a company (“the issuing company”) if –
  - (a) at that time, or
  - (b) at any earlier time after 16 April 2002,there are or have been any hedging arrangements that relate to some or all of the company’s liabilities under the security.  
This is subject to section 16.

Origin: ICTA s.209B(1); drafting.

- (2) If, as a result of this section, section 11 stops applying at any time in relation to a security, paragraph E of the section 4(1) list has effect in relation to the security from that time as it would have had effect if section 11 had never applied in relation to the security.

Origin: ICTA s.209B(3).

## 16 Exception to section 15 [j5209B1]

- (1) Section 15 does not prevent section 11 from applying in relation to a security at a given time if—
  - (a) conditions A to D are met in relation to any hedging arrangements existing at that time that relate to some or all of the company's liabilities under the security, and
  - (b) at all earlier times after 16 April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, conditions A to D were met in relation to those arrangements.

Origin: ICTA s.209B(2).

- (2) Condition A is that the hedging arrangements do not constitute, include or form part of any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax (including stamp duty and stamp duty land tax).

Origin: ICTA s.209B(4).

- (3) Condition B is that the hedging arrangements are such that any amounts intended under the arrangements to offset some or all of a corporation tax deduction in respect of the security—
  - (a) arise at the time when the deduction falls to be made, or within a reasonable time before or after that time, and
  - (b) arise—
    - (i) to the issuing company, or
    - (ii) to a company which is a member of the same group of companies as the issuing company.

Origin: ICTA s.209B(5).

- (4) In subsection (3) “corporation tax deduction” means a deduction that falls to be made for corporation tax purposes by the issuing company at any time.

Origin: ICTA s.209B(5).

- (5) Condition C is that the whole of every amount arising as mentioned in subsection (3) is brought into charge to corporation tax—
  - (a) by a company falling within subsection (3)(b)(i) or (ii), or
  - (b) by two or more companies (taken together) each of which falls within subsection (3)(b)(i) or (ii).

Origin: ICTA s.209B(6).

- (6) Condition D is that for corporation tax purposes any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable in proportion to the amounts required to be brought into charge to corporation tax by subsection (5).

Origin: ICTA s.209B(7).

- (7) For the purposes of this section two companies are members of the same group of companies if they are members of the same group of companies for the purposes of [Chapter 4 of Part 10 of ICTA (group relief)].

Origin: ICTA s.209B(9).

## 17 Meaning of “hedging arrangements” [j5209B3]

- (1) This section explains what “hedging arrangements” means, in relation to a security, in sections 15 and 16.

Origin: ICTA s. 209B(8); drafting.

- (2) “Hedging arrangements” means any scheme or arrangement for the purpose of securing that an offsetting amount of income or gain –
- (a) accrues, or
  - (b) is received or receivable.

Origin: ICTA s.209B(8).

- (3) In subsection (2) “offsetting amount” means an amount which is intended to offset some or all of the amounts that fall to be brought into account in respect of amounts accruing or falling to be paid in accordance with the terms of the security.

Origin: ICTA s.209B(8).

- (4) It does not matter whether the purpose mentioned in subsection (2) is the only purpose, or just one of the purposes, of the scheme or arrangement.

Origin: ICTA s.209B(8).

- (5) It does not matter whether the purpose mentioned in subsection (2) is to secure that the offsetting amount accrues, or is received or receivable, directly or indirectly.

Origin: ICTA s.209B(8).

- (6) In this section “brought into account” means brought into account in accordance with generally accepted accounting practice.

Origin: ICTA s.209B(8).

### *Distributions in respect of special securities*

## 18 Meaning of “special securities” [j52093]

- (1) Securities of a company are special securities for the purposes of this Chapter if they meet any of conditions A to E.

Origin: ICTA s.209(2).

- (2) Condition A is that the securities are issued as described in paragraph D of the section 4(1) list (securities issued otherwise than for new consideration).

Origin: ICTA s.209(2).

- (3) Condition B is that –
- (a) the securities –
    - (i) are convertible (directly or indirectly) into shares in the company, or

- (ii) carry a right to receive shares in or securities of the company, and
- (b) the securities are neither listed on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.

Origin: ICTA s.209(2).

- (4) Condition C is that under the securities the consideration given by the company for the use of the principal secured depends (to any extent) on the results of –
- (a) the company’s business, or
  - (b) any part of the company’s business.

Origin: ICTA s.209(2).

- (5) Condition D is that the securities are connected with shares in the company (see section 20(2)).

Origin: ICTA s.209(2).

- (6) Condition E is that the securities are equity notes –
- (a) issued by the company (“the issuing company”), and
  - (b) held by a company which –
    - (i) is associated with the issuing company, or
    - (ii) is a funded company.

Origin: ICTA s.209(2).

## 19 Meaning of “equity note” in section 18 [j520933]

- (1) For the purposes of section 18(6) a security is an equity note if any of the tests in subsection (4) is satisfied either –
- (a) as regards the whole of the principal, or
  - (b) as regards any part of it.

Origin: ICTA s.209(9).

- (2) These are the tests.

### *Test 1*

The security’s terms contain no particular date by which it is to be redeemed.

### *Test 2*

Under the security’s terms the date for redemption, or the latest date for redemption, falls after the end of the permitted period.

### *Test 3*

Under the security’s terms redemption is to occur after the end of the permitted period if a particular event occurs, and the event is one which (judged at the time of the security’s issue) is certain or likely to occur.

### *Test 4*

The issuing company can secure –

- (a) that there is no particular date by which the security is to be redeemed, or

(b) that the date for redemption falls after the end of the permitted period.

Origin: ICTA s.209(9).

(3) In subsection (2) “the permitted period” means the period of 50 years beginning with the date of the security’s issue.

Origin: ICTA s.209(9).

## 20 Section 18: other interpretation [j520932]

(1) For the purposes of section 18(4) the consideration given by the company for the use of the principal secured is not treated as depending on the results of the company’s business (or any part of it) merely because the terms of the security provide –

- (a) for the consideration to be reduced if the results improve, or
- (b) for the consideration to be increased if the results deteriorate.

Origin: ICTA s.209(3B).

(2) For the purposes of section 18(5) securities are connected with shares in the company if –

- (a) it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or acquire, a proportionate holding of the shares, and
- (b) that is a consequence of the nature of the rights attaching to the securities or shares and, in particular, any terms or conditions attaching to the right to transfer the securities or shares.

Origin: ICTA s.209(2).

(3) For the purposes of section 18(6) a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by –

- (a) the issuing company, or
- (b) a company associated with the issuing company.

Origin: ICTA s.209(11).

(4) For the purposes of subsection (3) above and section 18(6), a company is associated with the issuing company if –

- (a) the issuing company is a 75% subsidiary of the other company,
- (b) the other company is a 75% subsidiary of the issuing company, or
- (c) both are 75% subsidiaries of a third company.

Origin: ICTA s.209(10).

## 21 The principal secured: special securities [j52092f]

(1) No amount is to be regarded for the purposes of paragraph F of the section 4(1) list as representing the principal secured by a security so far as it exceeds any new consideration which has been received by the company for the issue of the security.

This is without prejudice to section 121(6).

Origin: ICTA s.209(3).

- (2) Subsection (3) applies if—
- (a) a security of a company is issued at a premium representing new consideration, and
  - (b) there is a distribution in respect of the security.

Origin: ICTA s.209(3A).

- (3) The reference in paragraph F of the section 4(1) list to however much of the distribution represents the principal secured by the security is to be read as a reference to the sum of—
- (a) however much of the distribution represents the principal, and
  - (b) however much of it represents the premium.

Origin: ICTA s.209(3A).

## 22 Alternative finance arrangements [j554]

- (1) Profit share return is not treated by virtue of section 18(4) as being a distribution for the purposes of the Corporation Tax Acts.

Origin: FA 2005 s.54(1).

- (2) If any arrangements fall within [section 48A of FA 2005] (alternative finance investment bond), neither—
- (a) additional payments under the arrangements, nor
  - (b) any part of the redemption payment under the arrangements,
- are treated by virtue of section 18(4) as being a distribution for the purposes of the Corporation Tax Acts.

Origin: FA 2005 s.54(2).

- (3) In this section—
- “additional payments” is to be read in accordance with [section 48A(1)(d)(iii) of FA 2005],
- “profit share return” has the meaning given by [sections 49(2) and 49A(2) of FA 2005], and
- “redemption payment” is to be read in accordance with [section 48A(1)(d)(ii) of FA 2005].

Origin: FA 2005 s.57; drafting.

### *Transfers of assets or liabilities treated as distributions*

## 23 Transfers of assets or liabilities treated as distributions [j52094]

- (1) This section applies if on a transfer of assets or liabilities—
- (a) by a company to its members, or
  - (b) to a company by its members,
- the amount or value of the benefit received by a member exceeds the amount or value of any new consideration given by the member.

Origin: ICTA s.209(4).

- (2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the member of an amount equal to the excess.

But this is subject to section 24.

Origin: ICTA s.209(4).

- (3) For the purposes of subsection (1) the value of a benefit, or of any consideration, is taken to be the market value.

Origin: ICTA s.209(4).

#### **24 Section 23: exceptions [j52094a]**

- (1) Section 23 does not apply if –
- (a) the company and the member receiving the benefit are both UK resident, and
  - (b) either –
    - (i) the company is a 51% subsidiary of the member, or
    - (ii) both are 51% subsidiaries of a third company which is also UK resident.

Origin: ICTA s.209(5), (7).

- (2) In determining whether one body corporate is a 51% subsidiary of another body corporate (“A”) for the purposes of subsection (1), A is treated as not being the owner of –
- (a) any share capital which it owns directly in a body corporate as trading stock,
  - (b) any share capital which it owns indirectly, and which is owned directly by a body corporate as trading stock, or
  - (c) any share capital which it owns directly or indirectly in a body corporate which is not UK resident.

Origin: ICTA s.209(7).

- (3) For the purposes of subsection (2) share capital owned by a body is owned as trading stock if (and only if) a profit on the sale of the shares would be treated as a trading receipt of the body’s trade.

Origin: ICTA s.209(7).

- (4) No transfer of assets (other than cash) or of liabilities between one company and another constitutes, or is treated as giving rise to, a distribution by virtue of section 23 if –
- (a) both the companies are UK resident,
  - (b) neither of them is a 51% subsidiary of a non-UK resident company, and
  - (c) the two companies are not under common control, either at the time of the transfer or as a result of it.

Origin: ICTA s.209(6).

- (5) In this section –
- “under common control” means under the control of the same person or persons, and
  - “control” is to be read in accordance with [section 416(2) to (6) of ICTA].

Origin: ICTA s.209(6).

*Bonus issues following repayment of share capital***25 Bonus issues following repayment of share capital treated as distributions [j5210]**

- (1) Subsection (2) applies if a company –
- (a) repays or has repaid any share capital, and
  - (b) at or after the time of the repayment issues any share capital as paid up otherwise than by the receipt of new consideration.

*Origin: ICTA s.210(1).*

- (2) The amount paid up as mentioned in subsection (1)(b) is treated for the purposes of the Corporation Tax Acts as a distribution made in respect of the shares on which it is paid up –
- (a) except so far as that amount exceeds the potentially chargeable amount, and
  - (b) except as provided by any provision of the Corporation Tax Acts.
- This is subject to subsections (4) and (5).

*Origin: ICTA s.210(1).*

- (3) In subsection (2) “the potentially chargeable amount” means –
- (a) the amount, or total amount, of share capital repaid as mentioned in subsection (1)(a), minus
  - (b) any amounts previously paid up as mentioned in subsection (1)(b) and treated as distributions by virtue of subsection (2).

*Origin: ICTA s.210(1).*

- (4) Subsection (2) does not apply if the repaid share capital consists of fully paid preference shares and –
- (a) those shares were issued as fully paid preference shares,
  - (b) they were issued wholly for new consideration not derived from ordinary shares, and
  - (c) throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.

*Origin: ICTA s.210(2).*

- (5) Except in relation to a company to which [paragraph D of section 704 of ICTA] applies (certain closely held companies), subsection (2) does not apply if the issue of share capital mentioned in subsection (1)(b) –
- (a) takes place more than 10 years after the repayment of share capital mentioned in subsection (1)(a), and
  - (b) is not of redeemable share capital.

*Origin: ICTA s.210(3).*

- (6) For the purposes of subsection (4) consideration is derived from ordinary shares if (and only if) –
- (a) it consists of the surrender, transfer or cancellation of ordinary shares,
  - (b) it consists of the variation of rights in ordinary shares, or
  - (c) it is derived from a repayment of share capital paid in respect of ordinary shares,

and for the purposes of this subsection it does not matter whether the ordinary shares are of the company or another company.

[Origin: ICTA s.210\(4\).](#)

- (7) In this section—
- “ordinary shares” means shares other than preference shares, and
  - “preference shares” means shares which—
    - (a) do not carry any right to dividends other than dividends at a fixed rate per cent of the nominal value of the shares, and
    - (b) carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares included in the official UK list.

[Origin: ICTA s.210\(4\).](#)

*Interpretation of references to repayment of share capital*

**26 Premiums paid on redemption of share capital [\[j52112\]](#)**

Premiums paid on redemption of share capital are not treated as repayments of share capital for the purposes of this Chapter.

This is subject to section 27.

[Origin: ICTA s.211\(7\); Annex 1, Change \[jc648\].](#)

**27 Share capital issued at a premium representing new consideration [\[j52112a\]](#)**

- (1) This section applies if—
- (a) share capital is issued at a premium representing new consideration, and
  - (b) a distribution is made in respect of shares representing the share capital.

[Origin: ICTA s.211\(5\).](#)

- (2) The amount of the premium is treated as forming part of the share capital for the purpose of determining under this Chapter whether the distribution is a repayment of share capital.

[Origin: ICTA s.211\(5\).](#)

- (3) Subsection (2) does not have effect in relation to any part of the premium after that part has been applied to paying up share capital.

[Origin: ICTA s.211\(6\).](#)

**28 Distributions following a bonus issue [\[j52111\]](#)**

- (1) This section applies if—
- (a) a company issues, or has issued, any share capital (“the bonus share capital”) as paid up otherwise than by the receipt of new consideration, and
  - (b) an amount paid up as mentioned in paragraph (a) does not fall to be treated as a qualifying distribution.

Origin: ICTA s.211(1).

- (2) Distributions made afterwards by the company in respect of shares representing the bonus share capital are not treated as repayments of share capital for the purposes of this Chapter.

But this is subject to section 29 and any other contrary provision in the Corporation Tax Acts.

Origin: ICTA s.211(1).

- (3) Except in relation to a company to which [paragraph D of section 704 of ICTA] applies (certain closely held companies), subsection (2) does not prevent a distribution being treated as a repayment of share capital if it is made—
- (a) more than 10 years after the issue of the share capital mentioned in subsection (1)(a), and
  - (b) in respect of share capital other than redeemable share capital.

Origin: ICTA s.211(2).

- (4) For the purposes of this section and section 29—
- (a) all shares of the same class are treated as representing the same share capital, and
  - (b) if shares are issued in respect of other shares, or are (directly or indirectly) converted into or exchanged for other shares, all such shares are treated as representing the same share capital.

Origin: ICTA s.211(4).

- (5) This section is to be read with section 53(3)(b) (stock dividends).

Origin: Drafting.

## 29 Cap on amount of distributions affected by section 28 [j52111a]

- (1) Section 28(2) does not apply to the distributions in question so far as they, together with any affected distributions made previously but after the issue of the bonus share capital, exceed the cap.

Origin: ICTA s.211(1).

- (2) In subsection (1) “the cap” means the total of the amounts—
- (a) paid up, otherwise than by the receipt of new consideration, on shares representing the bonus share capital, and
  - (b) not falling to be treated as qualifying distributions.

Origin: ICTA s.211(1).

- (3) In subsection (1) “affected distribution” means however much of a distribution made in respect of shares representing the bonus share capital—
- (a) would, but for section 28, be treated as a repayment of share capital, but
  - (b) cannot be so treated because of that section.

Origin: ICTA s.211(3).

- (4) In subsection (2)(a) the reference to amounts paid up is to amounts paid up at the time of the distributions in question or previously.

Origin: ICTA s.211(1).

### 30 Certain payments connected with exempt distributions [\[j5214B62\]](#)

- (1) A chargeable payment made within 5 years after an exempt distribution is not to be (if it otherwise would be) treated as a repayment of capital for the purposes of section 25 (bonus issues following repayment of share capital).

[Origin: ICTA s.214\(1\).](#)

- (2) The purpose of the provisions about demergers (which include this section) is set out in section 78.

[Origin: Drafting.](#)

- (3) In this section –
- (a) “chargeable payment” has the meaning given by section 92, and
  - (b) “exempt distribution” has the meaning given by section 79(2).

## CHAPTER 3

### MATTERS WHICH ARE NOT DISTRIBUTIONS

#### *Introduction*

### 31 Overview of Chapter [\[j52096a\]](#)

- (1) In this Chapter the following sections provide that a particular matter is not a distribution –
- (a) section 32 (distributions in respect of share capital on a winding up),
  - (b) section 33 (distribution as part of a cross-border merger),
  - (c) section 34 (interest etc paid in respect of certain securities),
  - (d) section 35 (purchase by unquoted trading company of own shares),
  - (e) section 53 (stock dividends),
  - (f) section 59 (building society payments),
  - (g) section 60 (industrial and provident societies: interest and share dividends),
  - (h) section 61 (dividend or bonus relating to transactions with industrial and provident society), and
  - (i) section 62 (UK agricultural or fishing co-operatives: interest and share dividends).

[Origin: Drafting.](#)

- (2) The following make similar provision outside this Chapter –
- (a) section 79 (exempt distributions), and
  - (b) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society’s business to a company: qualifying benefits).

[Origin: Drafting.](#)

*Distributions in a winding up*

**32 Distributions in respect of share capital in a winding up [j52096]**

Distributions made in respect of share capital in a winding up are not distributions of a company for the purposes of the Corporation Tax Acts.

Origin: ICTA s.209(1).

*Distribution as part of a cross-border merger*

**33 Distribution as part of a cross-border merger [j5209m]**

If –

- (a) a company making a distribution as part of a merger ceases to exist (without being wound up), and
- (b) section 140E or 140F of TCGA 1992 (cross-border mergers) applies in relation to the merger,

the distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

Origin: ICTA s.209(1A).

*Payments of interest*

**34 Interest etc paid in respect of certain securities [j5212]**

- (1) Any interest or other distribution which –
  - (a) is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax,
  - (b) is paid in respect of securities of the borrower which are special securities (as defined in section 18), and
  - (c) does not fall within paragraph E of the section 4(1) list (distributions in respect of non-commercial securities),

is not a distribution for the purposes of the Corporation Tax Acts.

Origin: ICTA s.212(1).

- (2) But subsection (1) does not apply if the company to which the interest or other distribution is paid is entitled under any enactment, other than [section 208 of ICTA (UK company distributions)], to an exemption from tax in respect of that interest or distribution.

Origin: ICTA s.212(3).

*Purchase of own shares*

**35 Purchase by unquoted trading company of own shares [j5219]**

- (1) A payment made by a company on the redemption, repayment or purchase of its own shares is not a distribution for the purposes of the Corporation Tax Acts if –

- (a) the company is an unquoted trading company, or the unquoted holding company of a trading group, and
- (b) either Condition A or Condition B is met.

Origin: ICTA s.219(1).

- (2) Condition A is that –
- (a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries,
  - (b) the redemption, repayment or purchase does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is –
    - (i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or
    - (ii) the avoidance of tax, and
  - (c) the requirements set out in sections 36 to 45 (so far as applicable) are met.

Origin: ICTA s.219(1).

- (3) Condition B is that the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) –
- (a) is applied by the person to whom it is made in discharging a liability of that person for inheritance tax charged on a death, and
  - (b) is applied in that way within two years after the death.

Origin: ICTA s.219(1).

- (4) But if condition B is met, subsection (1) does not apply so far as the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of –
- (a) shares in the company, or
  - (b) shares in another unquoted company which is a trading company or the holding company of a trading group.

Origin: ICTA s.219(2).

- (5) In sections 36 to 45 –
- “the purchase” means the redemption, repayment or purchase referred to in subsection (1), and
  - “the seller” means the owner of the shares at the time the redemption, repayment or purchase is made.

Origin: ICTA s.219(1).

### **36 Requirements as to residence [j5220]**

- (1) The seller must be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.

Origin: ICTA s.220(1).

- (2) If the shares are held through a nominee, the nominee must also be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.

Origin: ICTA s.220(1).

- (3) The residence and ordinary residence of personal representatives are taken for the purposes of this section to be the same as the deceased person's residence and ordinary residence immediately before that person's death.

Origin: ICTA s.220(3).

- (4) The references in this section to a person's ordinary residence are to be ignored in the case of a company.

Origin: ICTA s.220(4).

### 37 Requirement as to period of ownership [j52202]

- (1) The shares must have been owned by the seller throughout the 5 years ending with the date of the purchase.

Origin: ICTA s.220(5).

- (2) In determining whether the requirement in subsection (1) is met in a case where the seller acquired shares of the same class at different times—
- (a) shares acquired earlier are taken into account before shares acquired later, and
  - (b) any previous disposal by the seller of shares of that class is assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

Origin: ICTA s.220(8).

- (3) If the time when any shares were acquired would be determined for the purposes of capital gains tax under any provision of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital, conversion of securities etc) then, unless the shares—
- (a) were allotted for payment, or
  - (b) were comprised in share capital to which section 53 (stock dividends) applies,
- the time when the shares were acquired is determined in the same way for the purposes of this section.

Origin: ICTA s.220(9).

### 38 Determining the period of ownership [j52202a]

- (1) If at any time during the period mentioned in section 37(1) the shares were transferred to the seller by a person ("the transferor") who—
- (a) was then the seller's spouse or civil partner, and
  - (b) was then living with the seller (see section 120),
- any period during which the shares were owned by the transferor is treated for the purposes of section 37(1) as a period of ownership by the seller.

Origin: ICTA s.220(6).

- (2) But subsection (1) does not apply if at the date of the purchase the transferor is alive but is no longer the seller's spouse or civil partner living with the seller.

Origin: ICTA s.220(6).

- (3) If the seller became entitled to the shares under the will or on the intestacy of a previous owner, or is the personal representative of a previous owner –
  - (a) any period during which the shares were owned by the previous owner, or the personal representatives of a previous owner, is treated for the purposes of section 37(1) as a period of ownership by the seller, and
  - (b) section 37(1) has effect as if it referred to three years instead of five.

Origin: ICTA s.220(7).

### **39 Reduction of seller's interest as shareholder [j5221]**

- (1) If, immediately after the purchase, the seller owns shares in the company, the seller's interest as a shareholder must be substantially reduced.  
This is subject to section 45.

Origin: ICTA s.221(1).

- (2) If, immediately after the purchase, any associate of the seller owns shares in the company, the combined interests as shareholders of the seller and the seller's associates must be substantially reduced.  
This is subject to section 45.

Origin: ICTA s.221(2).

- (3) The seller's interest as a shareholder is substantially reduced if (and only if) the seller's subsequent interest is not more than 75% of the seller's prior interest.  
This is subject to section 40.

Origin: ICTA s.221(4).

- (4) "The seller's prior interest" means the total nominal value of the shares owned by the seller immediately before the purchase, expressed as a fraction of the issued share capital of the company at that time.

Origin: ICTA s.221(4).

- (5) "The seller's subsequent interest" means the total nominal value of the shares owned by the seller immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time.

Origin: ICTA s.221(4).

- (6) The question whether the combined interests as shareholders of the seller and the seller's associates are substantially reduced is determined in the same way as the question whether a seller's interest as shareholder is substantially reduced, except that the seller is assumed to have the interests of the seller's associates as well as the seller's own.

Origin: ICTA s.221(3).

### **40 Section 39: effect of entitlement to profits [j52212]**

- (1) The seller's interest as a shareholder is not taken to be substantially reduced for the purposes of section 39(1) if –
  - (a) the seller would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and

- (b) that share expressed as a fraction of the total of those profits is more than 75% of the corresponding fraction immediately before the purchase.

**Origin:** ICTA s.221(5).

- (2) In determining for the purposes of subsection (1) the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts is regarded as entitled to a distribution of the amount, or maximum amount, to which the person would be entitled for a year.

**Origin:** ICTA s.221(6).

- (3) In subsection (1) “profits available for distribution” has the meaning given by section 830(2) of the Companies Act 2006, but with the differences mentioned in subsections (4) and (5).

**Origin:** ICTA s.221(7).

- (4) For the purposes of subsection (1) the amount of the profits available for distribution (whether immediately before or immediately after the purchase) is treated as increased –
- (a) in the case of every company, by £100, and
  - (b) in the case of a company from which any person is entitled to periodic distributions calculated by reference to fixed rates or amounts, by a further amount equal to that required to make the distribution to which the person is entitled in accordance with subsection (2).

**Origin:** ICTA s.221(7).

- (5) If the total of the sums payable by the company –
- (a) on the purchase, and
  - (b) on any redemption, repayment or purchase of other shares of the company taking place at the same time,
- exceeds the amount of the profits available for distribution immediately before the purchase, that amount is treated as further increased by an amount equal to the excess.

**Origin:** ICTA s.221(7).

- (6) References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

**Origin:** ICTA s.221(8).

#### **41 Requirements where purchasing company is a member of a group [j5222]**

- (1) This section applies if the company making the purchase is immediately before the purchase a member of a group (“the purchaser’s group”).

**Origin:** ICTA s.222(1), (3).

- (2) If –
- (a) immediately after the purchase the seller owns shares in one or more other members of the purchaser’s group (whether or not the seller then owns shares in the company making the purchase), or

(b) immediately after the purchase the seller owns shares in the company making the purchase, and immediately before the purchase the seller owns shares in one or more other members of the group, the seller's interest as a shareholder in the group must be substantially reduced (see section 42(1)).

Origin: ICTA s.222(1).

- (3) If immediately before the purchase an associate of the seller owns shares in any member of the purchaser's group, the combined interests as shareholders in the group of the seller and the seller's associates must be substantially reduced (see section 42(4)).

Origin: ICTA s.222(3).

- (4) This section is subject to section 45 (relaxation of requirements in certain cases).

Origin: ICTA s.222(1), (3).

#### **42 Determining whether interests as shareholders in a group are substantially reduced [j5222a]**

- (1) The seller's interest as a shareholder in the purchaser's group is taken to be substantially reduced if (and only if) it is not more than 75% of the corresponding interest immediately before the purchase.

This is subject to section 43(1).

Origin: ICTA s.222(6).

- (2) The seller's interest as a shareholder in the group is calculated by –
- expressing the total nominal value of the shares owned by the seller in each relevant company as a fraction of the issued share capital of the company,
  - adding together the fractions obtained under paragraph (a), and
  - dividing the result by the number of relevant companies (including any in which the seller owns no shares).

Origin: ICTA s.222(5).

- (3) In this section and section 43 “relevant company” means –
- the company making the purchase, and
  - any other member of the purchaser's group in which the seller owns shares immediately before or immediately after the purchase.

This is subject to subsection (4).

Origin: ICTA s.222(2).

- (4) The question whether the combined interests as shareholders in the purchaser's group of the seller and the seller's associates are substantially reduced is determined in the same way as the question whether a seller's interest as a shareholder in a group is substantially reduced, except that –

- the seller is assumed to have the interests of the seller's associates as well as the seller's own, and
- references in subsection (3) and section 43(2) to a relevant company are read accordingly.

Origin: ICTA s.222(4)

**43 Section 42: effect of entitlement to profits [j52222]**

- (1) The seller's interest as a shareholder in the purchaser's group is not taken to be substantially reduced if –
  - (a) the seller would, if every member of the group distributed all its profits available for distribution immediately after the purchase, be entitled to a share of the profits of one or more of them, and
  - (b) the new entitlement exceeds 75% of the old entitlement.

Origin: ICTA s.222(7).

- (2) In subsection (1) –
  - “all its profits”, in relation to a member of the group, includes any profits received by the member on a distribution by another member,
  - “the new entitlement” means the share, or the aggregate of the shares, mentioned in subsection (1)(a), expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is –
    - (a) a relevant company, or
    - (b) a 51% subsidiary of a relevant company, and
  - “the old entitlement” means the corresponding fraction immediately before the purchase.

Origin: ICTA s.222(7).

- (3) Subsections (2) to (5) of section 40 apply for the purposes of this section as they apply for the purposes of section 40(1).

Origin: ICTA s.222(8).

**44 Other requirements [j5223]**

- (1) The seller must not, immediately after the purchase, be connected with –
  - (a) the company making the purchase, or
  - (b) any other company which is a member of the same group as that company.

Origin: ICTA s.223(1).

- (2) The purchase must not be part of a scheme or arrangement which is designed, or likely, to result in –
  - (a) the seller, or
  - (b) an associate of the seller,having disqualifying interests in the company.

Origin: ICTA s.223(2).

- (3) For the purposes of subsection (2), interests in the company are disqualifying interests if any of the requirements in subsection (1) and sections 39 and 41 could not be met if the person in question had those interests immediately after the purchase.

Origin: ICTA s.223(2).

- (4) A transaction occurring within one year after the purchase is treated for the purposes of subsection (2) as part of a scheme or arrangement of which the purchase is also part.

Origin: ICTA s.223(3).

- (5) Subsections (1) and (2) are subject to section 45.

Origin: ICTA s.221(1), (2).

**45 Relaxation of requirements in certain cases [j5224]**

If –

- (a) any of the requirements in sections 39 to 44 which are applicable are not met in relation to the seller, but
- (b) the seller proposed or agreed to the purchase in order that the requirement in section 39(2) or 41(3) could be met in respect of the redemption, repayment or purchase of shares owned by a person of whom the seller is an associate,

then, so far as that result is achieved through the purchase, section 35(2) has effect as if the requirements in sections 39 to 44 were met in relation to the seller.

Origin: ICTA s.224.

*Purchase of own shares: supplementary*

**46 Advance clearance of payments by Commissioners [j5225]**

- (1) A company may make an application under this section to the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) before making a payment on the redemption, repayment or purchase of its own shares.

Origin: ICTA s.225(1).

- (2) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 35 will apply to it, the payment is treated as one to which section 35 applies.

Origin: ICTA s.225(1).

- (3) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 35 will not apply to it, the payment is treated as one to which section 35 does not apply.

Origin: ICTA s.225(1).

**47 Advance clearance: supplementary [j5225a]**

- (1) An application under section 46 –
- (a) must be in writing, and
  - (b) must contain particulars of the relevant transactions.

Origin: ICTA s.225(2).

- (2) The Commissioners may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.

Origin: ICTA s.225(2).

- (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).

Origin: ICTA s.225(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.

Origin: ICTA s.225(3).

- (5) The Commissioners must notify their decision to the applicant –
- (a) within 30 days of receiving the application, or
  - (b) if they give notice under subsection (2), within 30 days of the notice being complied with.

Origin: ICTA s.225(4).

- (6) If particulars provided under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners, any resulting notification by the Commissioners is void.

Origin: ICTA s.225(5).

#### **48 Purchase of own shares: returns [j52261]**

- (1) A company which treats a payment made by it as one to which section 35 applies must make a return to an officer of Revenue and Customs giving details of –
- (a) the payment, and
  - (b) the circumstances by reason of which section 35 is regarded as applying to it.

Origin: ICTA s.226(1).

- (2) The return must be made within 60 days after the payment.

Origin: ICTA s.226(1).

#### **49 Information about schemes etc [j52262]**

- (1) A person connected with a company must give notice to an officer of Revenue and Customs if –
- (a) the company treats a payment made by it as one to which section 35 applies and in relation to which Condition A in that section is met, and
  - (b) the person knows of any such scheme or arrangement affecting the payment as is mentioned in section 44(2).

Origin: ICTA s.226(2).

- (2) The notice –
- (a) must contain particulars of the scheme or arrangement, and
  - (b) must be given within 60 days after the person first knows of both the payment and the scheme or arrangement.

Origin: ICTA s.226(2).

- (3) Subsection (4) applies if –
- (a) a company treats a payment made by it as one to which section 35 applies and in relation to which Condition A in that section is met, and
  - (b) an officer of Revenue and Customs has reason to believe that the payment may form part of a scheme or arrangement of the kind referred to –
    - (i) in section 35(2)(b), or
    - (ii) in section 44(2).

Origin: ICTA s.226(3).

- (4) The officer may by notice require the company, or any person who is connected with the company, to provide –
- (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and
  - (b) any other information which –
    - (i) the officer reasonably requires for the purposes of the provision in question, and
    - (ii) is information that the company or that person has or can reasonably obtain.

Origin: ICTA s.226(3).

- (5) The notice under subsection (4) must specify the period within which it must be complied.

Origin: ICTA s.226(3).

- (6) That period must be at least 60 days.

Origin: ICTA s.226(3).

## **50 Information about the person for whom a payment is received [j52263]**

- (1) If a company treats a payment made by it as one to which section 35 applies, an officer of Revenue and Customs may require the recipient of the payment to state –
- (a) whether it is received by the recipient on behalf of another person, and
  - (b) if so, that person’s name and address.

Origin: ICTA s.226(4).

- (2) Subsection (3) applies if –
- (a) a company treats a payment made by it as one to which section 35 applies, and
  - (b) the payment is received by a person on behalf of another person (“A”).

Origin: ICTA s.226(4).

- (3) An officer of Revenue and Customs may require A to state –
- (a) whether there is another person (in addition to A) on whose behalf the payment is received, and
  - (b) if so, that person’s name and address.

Origin: ICTA s.226(4).

## 51 Meaning of “group” and “51% subsidiary” in sections 35 to 51 [j52223]

- (1) In this section and sections 35 to 50 “group” means a company which has one or more 51% subsidiaries but is not itself a 51% subsidiary of any other company, together with those subsidiaries.

This is subject to subsection (2).

Origin: ICTA s.222(9).

- (2) If the whole or a significant part of the business carried on by an unquoted company (“the successor company”) was previously carried on by –

- (a) the company making the purchase, or
- (b) a company which is, apart from this subsection, a member of a group to which the company making the purchase belongs,

the successor company and any company of which it is a 51% subsidiary are treated as being members of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).

Origin: ICTA s.222(10).

- (3) But subsection (2) does not apply if the successor company first carried on the business in question more than 3 years before the time of the purchase.

Origin: ICTA s.222(11).

- (4) For the purposes of this section and sections 35 to 50, a company which has ceased to be a 51% subsidiary of another company before the time of the purchase is treated as continuing to be a 51% subsidiary of that company if at the time of the purchase there exist arrangements under which it could again become such a subsidiary.

Origin: ICTA s.222(12).

## 52 Sections 35 to 51: other interpretation [j5229]

- (1) In sections 35 to 51 –
- “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,
  - “quoted company” means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange,
  - “shares” includes stock,
  - “trade” does not include dealing in shares, securities, land or futures,
  - “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades,
  - “trading group” means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades, and
  - “unquoted company” means a company which is neither a quoted company nor a 51% subsidiary of a quoted company.

Origin: ICTA s.229(1).

- (2) References in sections 35 to 51 to the owner of shares are to the beneficial owner except where the shares –
- (a) are settled property, or
  - (b) are comprised in the estate of a person who has died.
- In such cases the references are to the trustees of the settlement or, as the case may be, the deceased's personal representatives.

Origin: ICTA s.229(2).

- (3) References in sections 35 to 51 to a payment made by a company include anything else that –
- (a) is a distribution, or
  - (b) would be a distribution but for section 35.

Origin: ICTA s.229(3).

#### *Stock dividends*

### **53 Stock dividends [j5230]**

- (1) This section applies to –
- (a) share capital issued by a UK resident company in lieu of a cash dividend, and
  - (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.

Origin: ICTA s.230, s.249(1).

- (2) For the purposes of subsection (1)(b) shares are of a qualifying class if –
- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
  - (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.

Origin: ICTA s.249(2).

- (3) If the share capital is issued in a case where section 410(2), (3) or (4) of ITTOIA 2005 (stock dividend income) applies –
- (a) the share capital does not, despite paragraph C of the section 4(1) list (redeemable share capital), constitute a distribution within the meaning of section 4(1), and
  - (b) the share capital is not, for the purposes of –
    - (i) section 25 (bonus issues following repayment of share capital), or
    - (ii) section 28 (distributions following a bonus issue),treated as issued “as paid up otherwise than by the receipt of new consideration”.

Origin: ICTA s.230.

- (4) This section is subject to –
- (a) section 54, and
  - (b) paragraph 7 of Schedule 2 (special rules for share capital issued in respect of shares issued before 6 April 1975).

Origin: Drafting.

**54 Application of section 53 where bonus share capital is converted etc [j5249]**

- (1) This section applies if bonus share capital falling within section 53(1)(b) is converted into, or exchanged for, shares in the company of a different class.

Origin: ICTA s.249(9).

- (2) In this section “replacement shares” means shares in the company issued –
- (a) in connection with the conversion or exchange, and
  - (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.

Origin: ICTA s.249(9).

- (3) Section 53 does not apply to any replacement shares.

Origin: ICTA s.249(9); drafting.

- (4) But if section 410 of ITTOIA 2005 (stock dividend income) applied to any of the bonus share capital, subsection (5) applies to replacement shares issued in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital to which section 410 of ITTOIA 2005 applied.

Origin: ICTA s.249(9).

- (5) The replacement shares referred to in subsection (4) –
- (a) do not, despite paragraph C of the section 4(1) list, constitute a distribution within the meaning of section 4(1), and
  - (b) are not, for the purposes of –
    - (i) section 25 (bonus issues following repayment of share capital), or
    - (ii) section 28 (distributions following a bonus issue),
 treated as issued “as paid up otherwise than by the receipt of new consideration”.

Origin: ICTA s.249(9).

**55 “Bonus share capital” and “in lieu of a cash dividend” [j5251]**

- (1) In sections 53 and 54 “bonus share capital” means –
- (a) share capital issued otherwise than wholly for new consideration, or
  - (b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.

Origin: ICTA s.251(1).

- (2) For the purposes of section 53(1)(a) share capital is issued by a company in lieu of a cash dividend if –
- (a) it is issued in consequence of the exercise by a person of an option conferred on the person, and
  - (b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.

Origin: ICTA s.249(1).

- (3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only –
- (a) if the person is required to choose one or the other, but also
  - (b) if the person is offered the one subject to a right, however expressed, to choose the other instead.

Origin: ICTA s.251(1).

- (4) The reference in subsection (2) to a person's exercise of an option includes a person's abandonment of, or failure to exercise, a right such as is mentioned in subsection (3)(b).

Origin: ICTA s.251(1).

## 56 Share capital to which section 53 applies: returns [j52501]

- (1) If a company issues, in an accounting period, share capital to which section 53 applies ("relevant share capital"), the company must make a return of the capital for the return period in which it was issued (see section 57).

Origin: ICTA s.250(1), (4).

- (2) The return must be made –
- (a) to an officer of Revenue and Customs, and
  - (b) within 30 days from the end of the return period.

Origin: ICTA s.250(1), (3).

- (3) A return made under this section for a return period must give the following information for any relevant share capital issued by the company in the period –
- (a) the date on which it was issued,
  - (b) the date on which the company was first required to issue it (if different from the date on which it was issued),
  - (c) details of the terms on which it was issued, and
  - (d) what its cash equivalent is under section 412 of ITTOIA 2005.

Origin: ICTA s.250(5).

- (4) If it appears to an officer of Revenue and Customs that a company should have, but has not, made a return under this section for a particular return period, the officer may by notice require the company to do so.

Origin: ICTA s.250(6).

- (5) If no relevant share capital was issued by the company in the return period, a return required to be made under subsection (4) must state that that is the case.

Origin: ICTA s.250(6).

- (6) The notice under subsection (4) must specify the period within which the return must be made.

Origin: ICTA s.250(6).

- (7) That period must be at least 30 days.

Origin: ICTA s.250(6).

**57 Return periods [j52503]**

- (1) For the purposes of section 56 a company's return periods in any accounting period are the periods that begin and end as follows.

*Rule 1*

A return period begins at the beginning of the accounting period.

*Rule 2*

If one or more quarterly days fall within the accounting period (excluding the last day of the accounting period), the end of each such day is the end of a return period, and a new return period begins immediately afterwards.

*Rule 3*

A return period ends at the end of the accounting period.

Origin: ICTA s.250(2).

- (2) For the purposes of subsection (1) the quarterly days are 31 March, 30 June, 30 September and 31 December.

Origin: ICTA s.250(2).

**58 Power to require further information [j52502]**

- (1) If share capital is included in a return made by a company under section 56, an officer of Revenue and Customs may by notice require the company to provide any further information relating to the share capital that the officer reasonably requires for the purposes of any of the following provisions –
- (a) sections 53 to 57, and
  - (b) Chapter 5 of Part 4 of ITTOIA 2005.

Origin: ICTA s.250(7).

- (2) The notice under subsection (1) must specify the period within which the information must be provided.

Origin: ICTA s.250(7).

- (3) That period must be at least 30 days.

Origin: ICTA s.250(7).

*Building society payments***59 Building society payments [j5477a]**

- (1) This section applies if –
- (a) any interest, or
  - (b) any dividend or other distribution,
- is payable in respect of shares in, or a deposit with or loan to, a building society.

Origin: ICTA s.477A(3), (9).

- (2) No part of the interest, or of the dividend or other distribution, is a distribution of the society for corporation tax purposes.

Origin: ICTA s.477A(3), (9).

- (3) See also section 372 of ITTOIA 2005 (which makes provision about the income tax treatment of building society dividends).

Origin: Drafting.

#### *Industrial and provident society payments*

### **60 Industrial and provident societies: interest and share dividends [j2021a]**

- (1) Interest paid by a registered industrial and provident society in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.

Origin: ICTA s.486(1), (12).

- (2) If any dividend, bonus, interest or other sum –
- (a) is paid to a shareholder in a registered industrial and provident society, and
  - (b) is payable by reference to the amount of the shareholder's holding in the society's share capital,
- it is not a distribution for corporation tax purposes.

Origin: ICTA s.486(1), (12).

- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.

Origin: ICTA s.486(1).

- (4) For the purposes of this section crediting an amount counts as paying it.

Origin: ICTA s.486(12).

- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

Origin: Drafting.

### **61 Dividend or bonus relating to transactions [j2021]**

- (1) This section applies if –
- (a) a dividend or bonus is granted by a registered industrial and provident society, and
  - (b) section [486(10) of ICTA] (deduction for dividends etc relating to transactions with an industrial and provident society) allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.

Origin: ICTA s.486(10), (11).

- (2) The dividend, or the bonus, is not a distribution for the purposes of the Corporation Tax Acts.

Origin: ICTA s.486(11).

*Payments made by UK agricultural or fishing co-operatives***62 UK agricultural or fishing co-operatives: interest and share dividends [j2021b]**

- (1) Interest paid by a UK agricultural or fishing co-operative in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.

Origin: ICTA s.486(1), (9), (12).

- (2) If any dividend, bonus, interest or other sum –
- (a) is paid to a shareholder in a UK agricultural or fishing co-operative, and
  - (b) is payable by reference to the amount of the shareholder's holding in the co-operative's share capital,
- it is not a distribution for corporation tax purposes.

Origin: ICTA s.486(1), (9), (12).

- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.

Origin: ICTA s.486(1).

- (4) For the purposes of this section crediting an amount counts as paying it.

Origin: ICTA s.486(12).

- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

Origin: Drafting.

**63 Meaning of “UK agricultural or fishing co-operative” [j2021C]**

- (1) In section 62 “UK agricultural or fishing co-operative” means a co-operative association –
- (a) which is established in the United Kingdom and UK resident, and
  - (b) whose primary object is assisting its members in –
    - (i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or
    - (ii) carrying on businesses consisting of the catching or taking of fish or shellfish.

Origin: ICTA s.486(9).

- (2) In subsection (1) “co-operative association” means a body with a written constitution from which the Secretary of State is satisfied that it is in substance a co-operative association.

Origin: ICTA s.486(12).

- (3) For the purposes of subsection (2) the Secretary of State must have regard to the way in which the body's constitution provides for its income to be applied for its members' benefit, and all other relevant provisions.

Origin: ICTA s.486(12).

- (4) In Northern Ireland subsections (2) and (3) apply with the substitution for “the Secretary of State” of “the Department of Agriculture and Rural Development”.

[Origin: ICTA s.486\(12\).](#)

*Supplementary provisions*

**64 Associated persons [j5227]**

- (1) This section and sections 65 and 66 contain the rules for determining whether a person is an associate of another (in relation to a company) for the purposes of this Chapter.

[Origin: ICTA s.227\(1\).](#)

- (2) Two persons living together (see section 120) who are –  
(a) a husband and wife, or  
(b) civil partners of each other,  
are associates of one another.

[Origin: ICTA s.227\(2\).](#)

- (3) If a person (“the young person”) is under the age of 18 –  
(a) the young person is an associate of the young person’s parents, and  
(b) the young person’s parents are associates of the young person.

[Origin: ICTA s.227\(2\).](#)

- (4) If a person is connected with a company –  
(a) the person is an associate of the company and any company controlled by it, and  
(b) the company and any company controlled by it are associates of the person.

[Origin: ICTA s.227\(3\).](#)

- (5) If a person –  
(a) is connected with one company (“company A”), and  
(b) has control of another company (“company B”),  
company B is an associate of company A.

[Origin: ICTA s.227\(4\).](#)

- (6) If one person is accustomed to act on the directions of another in relation to the affairs of a company, the two persons are associates of one another in relation to that company.

[Origin: ICTA s.227\(7\).](#)

**65 Associated persons: trustees [j52271]**

- (1) If shares in a company are held by the trustees of a settlement then, in relation to the company –  
(a) the trustees are associates of –

- (i) any person who (directly or indirectly) provided property to the trustees or has made a reciprocal arrangement for another to do so,
  - (ii) any person who is, by virtue of section 64(2) or (3), an associate of a person within sub-paragraph (i), and
  - (iii) any person who is, or may become, beneficially entitled to a significant interest in the shares, and
- (b) any such person is an associate of the trustees.

Origin: ICTA s.227(5).

- (2) Subsection (1) does not apply to shares held on trusts which relate exclusively to a registered pension scheme.

Origin: ICTA s.227(8).

- (3) Subsection (1) does not apply to shares held on trusts which –
- (a) are exclusively for the benefit of –
    - (i) the employees, or the employees and directors, of the company referred to in subsection (1) (or of companies in a group to which that company belongs), or
    - (ii) their dependants, and
  - (b) are not wholly or mainly for the benefit of directors or their relatives.

Origin: ICTA s.227(8).

- (4) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the settled property, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

Origin: ICTA s.227(9).

- (5) In subsection (3) "group" means a company which has one or more 51% subsidiaries, together with those subsidiaries.

Origin: ICTA s.227(8).

## 66 Associated persons: personal representatives [j52272]

- (1) If shares in a company are comprised in the estate of a person who has died then, in relation to the company –
- (a) the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and
  - (b) any such person is an associate of the personal representatives.

Origin: ICTA s.227(6).

- (2) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the property comprised in the estate concerned, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

Origin: ICTA s.227(9).

**67 Connected persons [j52282]**

- (1) This section contains the rules for determining whether a person is connected with a company for the purposes of this Chapter.

Origin: ICTA s.228(1).

- (2) A person is connected with a company if the person directly or indirectly possesses, or is entitled to acquire, more than 30% of –
- (a) the issued ordinary share capital of the company,
  - (b) the loan capital and the issued share capital of the company, or
  - (c) the voting power in the company.

Origin: ICTA s.228(2).

- (3) If a person –
- (a) acquired, or became entitled to acquire, loan capital of a company in the ordinary course of a business which includes the lending of money, and
  - (b) takes no part in the management or conduct of the company,
- the person's interest in that loan capital is ignored for the purposes of subsection (2).

Origin: ICTA s.228(3).

- (4) A person is connected with a company if the person (directly or indirectly) –
- (a) possesses, or
  - (b) is entitled to acquire,
- rights that would, in the event of a winding up or in any other circumstances, entitle the person to receive more than 30% of the assets of the company which would then be available for distribution to equity holders of the company.

Origin: ICTA s.228(4).

- (5) For the purposes of subsection (4) –
- (a) the persons who are equity holders of the company, and
  - (b) the percentage of the assets of the company to which a person would be entitled,
- must be determined in accordance with [paragraphs 1 and 3 of Schedule 18 to ICTA].

Origin: ICTA s.228(4).

- (6) In the application of [paragraphs 1 and 3 of Schedule 18 to ICTA] for the purposes of subsection (4) –
- (a) references in [paragraph 3] to the first company are to be read as references to the equity holder, and
  - (b) references to a winding up are to be read as including references to any other circumstances in which assets of the company are available for distribution to equity holders.

Origin: ICTA s.228(4).

- (7) A person who has control of a company is connected with it.

Origin: ICTA s.228(5).

**68 Section 67: supplementary [j5228]**

- (1) References in section 67 to the loan capital of a company are to any debt incurred by the company –
- (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (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.

Origin: ICTA s.228(6).

- (2) For the purposes of subsection (1)(c) the amount of the debt includes any premium on the debt.

Origin: ICTA s.228(6).

- (3) For the purposes of section 67 a person is treated as entitled to acquire anything which the person –
- (a) is entitled to acquire at a future date, or
  - (b) will at a future date be entitled to acquire.

Origin: ICTA s.228(7).

- (4) For the purposes of this section and section 67 a person is assumed to have the rights and powers of the person's associates (as well as the person's own rights and powers).

Origin: ICTA s.228(8).

**CHAPTER 4**

## SPECIAL RULES FOR DISTRIBUTIONS MADE BY CERTAIN COMPANIES

*Close companies***69 Certain expenses of close companies treated as distributions [j5418]**

- (1) This section applies if a close company incurs an expense in, or in connection with, the provision for any participator of –
- (a) living or other accommodation,
  - (b) entertainment,
  - (c) domestic or other services, or
  - (d) other benefits or facilities of any kind.

Origin: ICTA s.418(2).

- (2) The company is treated for the purposes of the Corporation Tax Acts as making a distribution to the participator of an amount equal to –
- (a) the expense, less
  - (b) any part of the expense that the participator makes good to the company (so far as not already deducted in calculating the amount of the expense in accordance with subsection (3)).

Origin: ICTA s.418(1), (2).

- (3) For the purposes of subsection (2)(a), the amount of the expense is equal to what would, under Chapter 6, 7 or 10 of Part 3 of ITEPA 2003, be the cash equivalent of the resultant benefit to the participator.

Origin: ICTA s.418(4).

- (4) Subsection (2) is subject to sections 70 and 71, and to any other express exceptions.

Origin: ICTA s.418(1), (2).

## 70 Exception for benefits treated as employment income etc [\[j54181\]](#)

Section 69 does not apply to expenses incurred –

- (a) in the provision for a person or persons mentioned in the first column of the table in this subsection of anything mentioned in the corresponding entry in the second column of the table, or
- (b) in connection with such provision.

### Expenses to which section 69 does not apply

<i>Person benefiting</i>	<i>Benefit</i>
A person employed in employment to which Part 3 of ITEPA 2003 (benefits etc treated as employment income) applies without the exclusion in section 216 of that Act (provisions not applicable to lower-paid employment).	Such benefits as are mentioned in – (a) Chapter 6, 7 or 10 of Part 3 of ITEPA 2003 (cars and vans, loans and other benefits), or (b) section 223 of that Act (payments on account of director's tax).
Any person.	Living accommodation which is (within the meaning of Chapter 5 of Part 3 of ITEPA 2003) provided by reason of the person's employment.
The spouse or civil partner, children or dependants of a person ("the employee") employed by the company.	A pension, annuity, lump sum, gratuity or other like benefit to be given on the employee's death or retirement.

Origin: ICTA s.418(3).

## 71 Exception for certain transfers between UK resident companies [\[j54183\]](#)

- (1) Section 69 does not apply if the company and the participator are both UK resident and –
- (a) one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company which is also UK resident, and
- (b) the benefit to the participator arises on a transfer of assets or liabilities –
- (i) by the company to the participator, or
- (ii) to the company by the participator,

or in connection with such a transfer.

Origin: ICTA s.418(5).

- (2) In determining whether one body corporate (“A”) is a 51% subsidiary of another (“B”) for the purposes of subsection (1), B is treated as not being the owner of—
- (a) any share capital which it owns directly in a body corporate as trading stock,
  - (b) any share capital which it owns indirectly, and which is owned directly by a body corporate as trading stock, or
  - (c) any share capital which it owns directly or indirectly in a body corporate that is not UK resident.

Origin: ICTA s.418(6).

- (3) For the purposes of subsection (2) share capital owned by a body is owned as trading stock if (and only if) a profit on the sale of the shares would be treated as a trading receipt of the body’s trade.

Origin: ICTA s.418(6).

## 72 Extension of references to close companies and participators [j54182]

- (1) Subsection (2) applies if—
- (a) each of two or more close companies makes a payment to a person (“the recipient”),
  - (b) each recipient—
    - (i) is not a participator in the company making the payment, but
    - (ii) is a participator in another of those companies, and
  - (c) the companies are acting in concert or under arrangements made by any person.

Origin: ICTA s.418(7).

- (2) Each recipient, and the company in which that recipient is a participator, are treated for the purposes of sections 69 to 71 as if the payment made to that recipient had been made by that company.

Origin: ICTA s.418(7).

- (3) Subsections (1) and (2) apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as they apply in relation to the making of a payment.

Origin: ICTA s.418(7).

- (4) For the purposes of this section and sections 69 to 71, any reference to a participator includes an associate of a participator.

Origin: ICTA s.418(8).

- (5) For the purposes of this section and sections 69 to 71, any participator in a company which controls another company (“the controlled company”) is treated as being a participator in the controlled company as well.

Origin: ICTA s.418(8).

*Companies carrying on a mutual business*

**73 Companies carrying on a mutual business [j54901]**

- (1) Subsection (2) applies if a company carries on a business (“the mutual business”) of –
- (a) mutual trading,
  - (b) mutual insurance, or
  - (c) other mutual business.

Origin: ICTA s.490(1).

- (2) The provisions of the Corporation Tax Acts relating to distributions apply to relevant distributions made by the company only so far as they are made out of –
- (a) profits of the company which are brought into charge to corporation tax, or
  - (b) franked investment income.

This is subject to subsection (4).

Origin: ICTA s.490(1).

- (3) In subsection (2) “relevant distributions” means distributions which –
- (a) are made to persons participating in the mutual activities of the mutual business, and
  - (b) derive from those activities.

Origin: ICTA s.490(1).

- (4) If a company carries on a mutual life assurance business, the provisions of the Corporation Tax Acts relating to distributions do not apply to distributions made by the company which –
- (a) are made to persons participating in the mutual activities of the business, and
  - (b) derive from those activities.

Origin: ICTA s.490(2).

**74 Distributions out of surpluses not charged to tax etc [j54903]**

- (1) The fact that –
- (a) a distribution made by a company carrying on a mutual business is derived from the mutual activities of that business, and
  - (b) the recipient is a company participating in those activities,
- does not affect the character that the payment or other receipt has for the purposes of corporation tax or income tax in the hands of the recipient.

Origin: ICTA s.490(3).

- (2) Subsection (1) does not affect distributions to which the provisions of the Corporation Tax Acts relating to distributions apply under section 73 (distributions made out of profits brought into charge to corporation tax or franked investment income).

Origin: ICTA s.490(3).

*Companies not carrying on a business***75 Companies not carrying on a business [j54902]**

- (1) This section applies if a company –
  - (a) does not carry on, and has never carried on –
    - (i) a trade, or
    - (ii) a business of holding investments, and
  - (b) is not established for purposes which include carrying on a trade or a business of holding investments.

Origin: ICTA s.490(4).

- (2) The provisions of the Corporation Tax Acts relating to distributions apply to distributions made by the company only so far as the distributions are made out of –
  - (a) profits of the company which are brought into charge to corporation tax, or
  - (b) franked investment income.

Origin: ICTA s.490(4).

*Members of a 90% group***76 Members of a 90% group [j52541a]**

- (1) In the Corporation Tax Acts “distribution”, in relation to a company which is a member of a 90% group, includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

Origin: ICTA s.254(3).

- (2) Subsection (1) is without prejudice to paragraph B of the section 4(1) list (distributions, other than dividends, in respect of shares) as extended by section 117(1).

Origin: ICTA s.254(3).

- (3) Nothing in subsection (1) requires a company to be treated as making a distribution to any other company which is in the same group and is UK resident.

Origin: ICTA s.254(4).

- (4) In this section “90% group” means a company and all its 90% subsidiaries.

Origin: ICTA s.254(1).

## CHAPTER 5

### DEMERGERS

#### *Introduction*

#### **77 Key terms etc [j5214x]**

- (1) Some key terms in this Chapter are –
  - (a) “chargeable payment” (see sections 92 and 93),
  - (b) “company concerned in an exempt distribution” (see section 94),
  - (c) “the distributing company” (see section 83),
  - (d) “exempt distribution” (defined in section 79), and
  - (e) “relevant company” (defined in section 84).
- (2) For a further rule about chargeable payments made within 5 years after an exempt distribution see section 30 (rule that they are not treated as repayments of capital for certain purposes).

Origin: Drafting.

#### **78 Purpose of provisions about demergers [j5213a]**

- (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.

Origin: ICTA s.213(1).

- (2) In subsection (1) “the provisions about demergers” means –
  - (a) this Chapter, except section 82 (and section 79, so far as relating to section 82), and
  - (b) section 30 (chargeable payments not treated as repayments of share capital).

Origin: ICTA s.213(1).

#### *Exempt distributions*

#### **79 Exempt distributions [j5213x]**

- (1) An exempt distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

Origin: ICTA s.213(2), s.213A(1).

- (2) In this Chapter “exempt distribution” means a distribution which is an exempt distribution by virtue of section 80, 81 or 82.

Origin: ICTA s.213(3), s.213A(2), s.218(1).

**80 Transfer of shares in subsidiaries to members [j5213z]**

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) conditions A to F in sections 85 and 86 are 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 89 are met in respect of the distribution.

Origin: ICTA s.213(2).

**81 Transfer by distributing company and issue of shares by transferee company [j5213]**

- (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.

Origin: ICTA s.213(3).

- (2) A distribution to which this section applies is an exempt distribution if –
  - (a) conditions A to D in section 85 and conditions G to K in section 87 are 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 89 are met in respect of the distribution.

Origin: ICTA s.213(2).

**82 Division of business in a cross-border transfer [j5213a1]**

- (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.

Origin: ICTA s.213A(1).

- (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.

Origin: ICTA s.213A(1).

### 83 “The distributing company” [j5213zb]

References in this Chapter to the distributing company are –

- (a) in the case of a distribution falling within paragraph (a) of section 80, to the company that makes the transfer of shares mentioned in that paragraph,
- (b) in the case of a distribution falling within section 81(1), to the company that makes the transfer mentioned in section 81(1)(a), and
- (c) in the case of a distribution falling within section 82(1), to the company that makes the transfer of part of a business mentioned in section 82(1)(a).

Origin: ICTA s.213(3), s.213A(3).

### 84 Meaning of “relevant company” [j5213za]

- (1) This section gives the meaning of “relevant company” in this Chapter.

Origin: Drafting.

- (2) In the case of a distribution falling within section 80(a) the relevant companies are –
  - (a) the distributing company, and
  - (b) each subsidiary whose shares are transferred as mentioned in section 80(a).

Origin: ICTA s.213(3).

- (3) In the case of a distribution falling within section 81(1), the relevant companies are –
  - (a) the distributing company,
  - (b) each transferee company mentioned in section 81(1)(a), and
  - (c) each subsidiary whose shares are transferred as mentioned in section 81(1)(a)(ii).

Origin: ICTA s.213(3).

- (4) In the case of a distribution falling within section 82(1), the relevant companies are –
  - (a) the distributing company, and
  - (b) each transferee company mentioned in section 82(1)(a).

Origin: ICTA s.213A(3).

*Exemption by virtue of section 80 or 81: conditions*

### 85 General conditions [j52132]

- (1) Condition A is that each relevant company must be UK resident at the time of the distribution.

Origin: ICTA s.213(4).

- (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 80(a) or 81(1)(a)(ii) must be either a trading company or the holding company of a trading group.

**Origin:** ICTA s.213(5).

- (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.

**Origin:** ICTA s.213(10).

- (4) Condition D is that the distribution must not form part of a scheme or arrangement to which subsection (5) applies.

**Origin:** ICTA s.213(11).

- (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 92),
  - (c) the making, in pursuance of a scheme or arrangements with a company (“the listed company”) or with any of its main participators, of what would be a chargeable payment if the listed company 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.

**Origin:** ICTA s.213(11).

- (6) Subsections (5)(b) and (c) are without prejudice to the width of subsection (5)(a).

**Origin:** ICTA s.213(11).

- (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 93(1)(b), and
- “tax” includes stamp duty and stamp duty land tax.

**Origin:** ICTA s.213(11).

## 86 Conditions for distributions within section 80(a) [j52133]

- (1) Condition E is that the shares mentioned in section 80(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.

Origin: ICTA s.213(6).

- (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.But see subsections (3) and (4).

Origin: ICTA s.213(6).

- (3) Condition F need not be met if the distributing company is a 75% subsidiary of another company.

Origin: ICTA s.213(12).

- (4) Condition F need not be met if –
  - (a) the transfer mentioned in section 80(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 in a winding up or otherwise.

Origin: ICTA s.213(7).

## 87 Conditions for distributions within section 81(1) [j52134]

- (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.

Origin: ICTA s.213(8).

- (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.

Origin: ICTA s.213(8).

- (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.

Origin: ICTA s.213(8).

- (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.

Origin: ICTA s.213(8).

- (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.

Origin: ICTA s.213(8).

#### 88 Cases where condition K does not apply [j52134a]

- (1) Condition K need not be met if the distributing company is a 75% subsidiary of another company.

Origin: ICTA s.213(12).

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

Origin: ICTA s.213(9).

#### 89 Conditions to be met if the distributing company is a 75% subsidiary [j52135]

- (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.

Origin: ICTA s.213(12).

- (2) Condition M is that the distribution (“the original distribution”) must be followed by one or more other distributions (“further distributions”) falling within section 80(a) or 81(1)(a)(ii) which –
  - (a) are exempt distributions, and
  - (b) comply with subsection (3).

Origin: ICTA s.213(12).

- (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.

Origin: ICTA s.213(12).

### *Chargeable payments*

#### **90 Chargeable payments connected with exempt distributions [j5214B5]**

- (1) This section applies if a chargeable payment is made within 5 years after an exempt distribution.

Origin: ICTA s.214(1).

- (2) The amount or value of the payment is chargeable to income tax or corporation tax.

Origin: ICTA s.214(1).

- (3) An amount charged to income tax under subsection (2) is treated for income tax purposes as an amount of income.

Origin: ICTA s.214(1).

- (4) So far as relating to corporation tax, subsection (2) has effect as an application of the charge to corporation tax on income.

Origin: ICTA s.214(1B).

- (5) Income tax under subsection (2) is charged on the full amount or value of the payment made in the tax year.

Origin: ICTA s.214(1A).

- (6) The person liable for any income tax charged under subsection (2) is the person receiving or entitled to the payment.

Origin: ICTA s.214(1A).

- (7) References in this section and sections 91 to 98 to a payment include –

- (a) the assumption of a liability, and  
(b) any other transfer of money's worth.

Origin: ICTA s.214(6), s.215(4).

#### **91 Chargeable payments not deductible in calculating profits [j5214B6]**

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 337A(1)(a) of ICTA] (no deduction for distributions in calculation of a company's profits).

Origin: ICTA s.214(1).

#### **92 Meaning of “chargeable payment” [j5214B65]**

- (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 93.

**Origin:** ICTA s.214(2).

- (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.

**Origin:** ICTA s.214(2); drafting.

- (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).

**Origin:** ICTA s.214(2).

- (4) Condition C is that the payment –
- (a) is not made for genuine commercial reasons, or
  - (b) forms part of a tax avoidance scheme.

**Origin:** ICTA s.214(2).

- (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.

**Origin:** ICTA s.214(2).

- (6) In this section and section 93 –
- “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.

**Origin:** ICTA s.214(2).

- (7) This section is to be read with section 93.

**Origin:** Drafting.

### 93 Meaning of “chargeable payment”: unquoted companies [j5214B63]

- (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.

Origin: ICTA s.214(3).

- (2) The payment is a chargeable payment if it meets each of conditions B1 to D1.

Origin: ICTA s.214(3); drafting.

- (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).

Origin: ICTA s.214(2), (3).

- (4) Condition C1 is that the payment –
- (a) is not made for genuine commercial reasons, or
  - (b) forms part of a tax avoidance scheme.

Origin: ICTA s.214(2), (3).

- (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.

Origin: ICTA s.214(2), (3).

- (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.

Origin: ICTA s.214(3).

#### **94 Meaning of “company concerned in an exempt distribution” [j5214B64]**

- (1) For the purposes of this Chapter the companies concerned in an exempt distribution are –
- (a) any relevant company (as defined in section 84), and
  - (b) any other company which was connected with any relevant company for the whole or any part of the affected period.

Origin: ICTA s.214(4).

- (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.

Origin: ICTA s.214(4).

- (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.

Origin: ICTA s.214(5).

*Advance clearance***95 Advance clearance of distributions [j5215]**

- (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").

Origin: ICTA s.215(1).

- (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.

Origin: ICTA s.215(1).

**96 Advance clearance of payments [j5215a]**

- (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.

Origin: ICTA s.215(2).

- (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 (including stamp duty or stamp duty land tax).

Origin: ICTA s.215(2).

- (3) 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).

Origin: ICTA s.215(3).

- (4) If the Commissioners give a notification on an application under subsection (3), 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.

Origin: ICTA s.215(3).

**97 Requirements relating to applications for clearance [j52152a]**

- (1) Any application under section 95 or 96 –

- (a) must be in writing, and
- (b) must contain particulars of the relevant transactions.

Origin: ICTA s.215(5).

- (2) The Commissioners may by notice require a person making an application under section 95 or 96 to provide further particulars for the purpose of enabling them to make their decision.

Origin: ICTA s.215(5).

- (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).

Origin: ICTA s.215(5).

- (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.

Origin: ICTA s.215(5).

#### **98 Decision of the Commissioners or Special Commissioners [j52152b]**

- (1) The Commissioners must notify their decision to the person making the application under section 95 or 96 –
  - (a) within 30 days of receiving the application, or
  - (b) if they give a notice under section 97(2), within 30 days of when the notice is complied with.

Origin: ICTA s.215(6).

- (2) Subsection (3) applies if the Commissioners –
  - (a) (in the case of an application under section 95) 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 96) notify the applicant that they are not satisfied that a payment meets the conditions set out in section 96(2), or
  - (c) (in either case) do not notify their decision to the applicant within the time required by subsection (1).

Origin: ICTA s.215(7).

- (3) The applicant may require the Commissioners to transmit the application, together with any notice given and further particulars provided under section 97(2), to the Special Commissioners.

Origin: ICTA s.215(7).

- (4) In that event, any notification by the Special Commissioners has effect for the purposes of this section as if it were a decision of the Commissioners.

Origin: ICTA s.215(7).

- (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.

Origin: ICTA s.215(7).

- (6) If any particulars provided under section 97 in relation to an application under section 95 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or Special Commissioners, any resulting notification that the Commissioners or Special Commissioners are satisfied that the distribution will be an exempt distribution is void.

Origin: ICTA s.215(8).

- (7) If any particulars provided under section 97 in relation to an application under section 96 do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners or Special Commissioners, any resulting notification that the Commissioners or Special Commissioners are satisfied that the payment in question meets the conditions set out in section 96(2) is void.

Origin: ICTA s.215(8).

#### *Information and returns*

### **99 Exempt distributions: returns [j52161]**

- (1) A company which makes an exempt distribution must make a return to an officer of Revenue and Customs.

Origin: ICTA s.216(1).

- (2) The return must give details of –
  - (a) the distribution, and
  - (b) the circumstances by reason of which it is exempt.

Origin: ICTA s.216(1).

- (3) The return must be made within 30 days after the distribution.

Origin: ICTA s.216(1).

### **100 Payments falling within section 80(a) or 81(1) [j52171]**

- (1) This section applies if –
  - (a) a distribution falling within section 80(a) (transfer of shares in subsidiaries to members) or section 81(1) (transfer by distributing company and issue of shares by transferee company) has been made, and
  - (b) an officer of Revenue and Customs has reason to believe that it may form part of a scheme or arrangement to which section 85(5) applies.

Origin: ICTA s.217(1).

- (2) The officer may by notice require any relevant company, or any person controlling a relevant company, to provide –

- (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or existed, and
- (b) any other information which –
  - (i) the officer reasonably requires for the purposes of section 85(4) and (5), and
  - (ii) is information that the company or that person has or can reasonably obtain.

Origin: ICTA s.217(1).

- (3) The notice must specify the period within which it must be complied with.

Origin: ICTA s.217(1).

- (4) That period must be at least 30 days.

Origin: ICTA s.217(1).

#### **101 Chargeable payments etc: returns [j52162]**

- (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.

Origin: ICTA s.216(2).

- (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.

Origin: ICTA s.216(2).

- (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 (including stamp duty and stamp duty land tax), but
  - (b) would be a chargeable payment if that were not so.

Origin: ICTA s.216(3).

- (4) But subsection (3) does not apply if a notification under section 96(4) (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.

Origin: ICTA s.216(4).

- (5) 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.

Origin: ICTA s.216(3).

- (6) 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.

Origin: ICTA s.216(3).

- (7) The return under subsection (1) or (3) must be made within 30 days after the transfer or payment.

Origin: ICTA s.216(2), (3).

## 102 Chargeable payments etc: information [j52172]

- (1) This section applies if Condition A or Condition B is met.

Origin: ICTA s.217(2).

- (2) Condition A is that an officer of Revenue and Customs has reason to believe that a person has not made a return that the person is required to make under section 101(1) or (3) in respect of a payment or transfer.

Origin: ICTA s.217(2).

- (3) Condition B is that an officer of Revenue and Customs has reason to believe that a person has not delivered an account or return that the person is required to deliver under section 949(2), 950(2) or 963(2) of ITA 2007 in respect of a payment to which section 928 of that Act (chargeable payments connected with exempt distributions) applies.

Origin: ICTA s.217(2).

- (4) The officer may by notice require the person to provide any information relating to the payment or transfer that the officer reasonably requires for the purposes of any of the following provisions—
- (a) sections 30 and 90 to 94, and
  - (b) section 928 of ITA 2007 and Chapters 15 (collection: deposit-takers, building societies and certain companies) and 16 (collection: certain payments by other persons) of Part 15 of that Act.

Origin: ICTA s.217(2).

- (5) The notice must specify the period within which the information must be provided.

Origin: ICTA s.217(2).

- (6) That period must be at least 30 days.

Origin: ICTA s.217(2).

### 103 Information about the existence of schemes etc [\[j52173\]](#)

- (1) This section applies if an officer of Revenue and Customs has reason to believe—
  - (a) that a payment or transfer has been made within 5 years after an exempt distribution, and
  - (b) that the payment or transfer is a chargeable payment because of the existence of a scheme or arrangement such as is mentioned in section 93(1).

[Origin: ICTA s.217\(3\).](#)

- (2) The officer may by notice require a responsible person to provide—
  - (a) a declaration in writing stating whether or not, according to information which that person has or can reasonably obtain, any such scheme or arrangement exists or existed, and
  - (b) any other information which—
    - (i) the officer reasonably requires for the purposes mentioned in section 102(4), and
    - (ii) is information that the person has or can reasonably obtain.

[Origin: ICTA s.217\(3\).](#)

- (3) The notice must specify the period within which it must be complied with.

[Origin: ICTA s.217\(3\).](#)

- (4) That period must be at least 30 days.

[Origin: ICTA s.217\(3\).](#)

- (5) In subsection (2) “a responsible person” means the person making the payment or transfer or, if that person is a company, any person controlling it.

[Origin: ICTA s.217\(3\).](#)

### 104 Information about person for whom a payment is received [\[j52174\]](#)

- (1) An officer of Revenue and Customs may require any recipient of a chargeable payment to state—
  - (a) whether it is received by the recipient on behalf of another person, and
  - (b) if so, that person’s name and address.

[Origin: ICTA s.217\(4\).](#)

- (2) An officer of Revenue and Customs may require a person (“A”) on whose behalf a chargeable payment is received to state—
  - (a) whether there is another person (in addition to A) on whose behalf the payment is received, and
  - (b) if so, that person’s name and address.

[Origin: ICTA s.217\(4\).](#)

*Interpretation of Chapter***105 Meaning of “unquoted company” [j5218b5a]**

- (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.

Origin: ICTA s.218(1).

- (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.

Origin: ICTA s.218(1).

- (3) The reference in subsection (1) to shares does not include debenture stock, loan stock, preferred shares or preferred stock.

Origin: ICTA s.218(1).

**106 Other definitions etc [j5218b6]**

- (1) In this Chapter –
  - “control” is to be read in accordance with [section 416(2) to (6) of ICTA],
  - “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 85(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, 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.

Origin: ICTA s.218(1).

- (2) In determining for the purposes of sections 80(a), 81(1), 86(4) or 88(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.

Origin: ICTA s.218(2).

- (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
- (b) any share capital which it owns indirectly and which is owned directly by a body corporate as trading stock.

Origin: ICTA s.218(3).

- (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.

Origin: ICTA s.218(3).

## CHAPTER 6

### INFORMATION AND RETURNS: FURTHER PROVISIONS

#### *General duties to provide information*

#### **107 Qualifying distributions: right to request a statement [j52341]**

- (1) If a UK resident company makes a qualifying distribution, the recipient is entitled to ask the company to provide a statement in writing showing—
  - (a) the amount or value of the distribution, and
  - (b) the amount of the tax credit (under section 123(1) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the distribution.

Origin: ICTA s.234(1); drafting.

- (2) For the purposes of subsection (1)(b) it does not matter whether or not the recipient is in fact an eligible person.

Origin: ICTA s.234(1).

- (3) The request must be in writing.

Origin: ICTA s.234(1).

- (4) The company which makes the distribution has a duty to comply with a request under subsection (1), and that duty is enforceable by the recipient.

Origin: ICTA s.234(1), (2).

- (5) In this section “eligible person” means a person who is entitled to a tax credit in respect of the dividend.

Origin: ICTA s.234(1).

- (6) This section does not affect the operation of section 110 (duty to provide tax certificates).

Origin: ICTA s.234(1).

#### **108 Non-qualifying distributions etc: returns and information [j52342]**

- (1) If a company makes a distribution which is not a qualifying distribution, it must make a return to an officer of Revenue and Customs.

Origin: ICTA s.234(5).

- (2) The return must –
- (a) contain particulars of the transaction giving rise to the distribution,
  - (b) state the name and address of the recipient, or each recipient, of the distribution, and
  - (c) state the amount or value of the distribution received by the recipient, or each recipient.

Origin: ICTA s.234(6).

- (3) The return must be made –
- (a) within 14 days from the end of the accounting period in which the distribution is made, or
  - (b) if the date on which the distribution is made does not fall in an accounting period, within 14 days from that date.

Origin: ICTA s.234(5).

- (4) If it is not apparent whether or not a transaction gives rise to a distribution which is not a qualifying distribution, the company –
- (a) must make a return to an officer of Revenue and Customs containing particulars of the transaction, and
  - (b) must do so within the time limit that would be given by subsection (3) if the transaction did give rise to such a distribution.

Origin: ICTA s.234(7).

- (5) If subsection (4) applies, an officer of Revenue and Customs may serve a notice on the company requiring it to provide any further information in relation to the transaction that the officer reasonably requires.

Origin: ICTA s.234(7).

- (6) If it appears to an officer of Revenue and Customs that particulars of any transaction should have been, but have not been, included in a return under subsection (1) or (4), the officer may serve a notice on the company requiring it to provide any information relating to the transaction that the officer reasonably requires.

Origin: ICTA s.234(8).

- (7) The company must provide the information required under subsection (5) or (6) within the time specified in the notice.

Origin: ICTA s.234(7), (8).

## 109 Non-qualifying distributions etc: additional information [j52343]

- (1) This section –
- (a) gives officers of Revenue and Customs power to require persons to provide information for the purposes of section 108, and
  - (b) applies only if section 108(1), (4) or (6) applies.

Origin: ICTA s.234(9); drafting.

- (2) An officer of Revenue and Customs may by notice require a company which is, or appears to the officer to be, a close company to provide any information the officer reasonably requires for the purposes of section 108.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.2; Annex 1, Change \[jc608\].](#)

- (3) The notice under subsection (2) must specify the period within which the information must be provided and that period must be at least 30 days.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.2.](#)

- (4) An officer of Revenue and Customs may, for the purposes of section 108, by notice require any person in whose name any shares or loan capital are registered –

- (a) to state whether or not that person is the beneficial owner of the shares or loan capital, and
- (b) if that person is not the beneficial owner of the shares or loan capital, to provide the name and address of the person on whose behalf the shares or loan capital are registered in that person's name.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.3\(1\), \(2\).](#)

- (5) Subsections (6) and (7) apply if a company (“the issuing company”) appears to an officer of Revenue and Customs to be a close company.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.4\(1\).](#)

- (6) The officer may, for the purposes of section 108, by notice require the issuing company to provide the officer with –

- (a) particulars of any bearer securities issued by the company,
- (b) the names and addresses of the persons to whom the securities were issued, and
- (c) details of the amounts issued to each person.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.4\(1\).](#)

- (7) The officer may, for the purposes of section 108, by notice require –

- (a) any person to whom bearer securities were issued by the company, or
- (b) any person to or through whom bearer securities issued by the company were subsequently sold or transferred,

to provide any further information that the officer reasonably requires with a view to enabling the officer to find out the names and addresses of the persons beneficially interested in the securities.

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.4\(1\).](#)

- (8) In this section –

“securities” includes –

- (a) shares, stocks, bonds, debentures and debenture stock, and
- (b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company, and

“loan creditor” has the meaning given by [section 417(7) to (9) of ICTA].

[Origin: ICTA s.234\(9\); FA 1989 Sch.12 para.4\(2\).](#)

*Companies and nominees required to provide tax certificates***110 Company distributing dividend or interest: duty to provide tax certificates [j5234a1]**

- (1) This section applies if a distribution consisting of any dividend or interest is made by a company which is –
- (a) a company within the meaning of the [Companies Act 1985 (c. 6)] or the [Companies (Northern Ireland) Order 1986 ], or
  - (b) a company created by letters patent or by or in pursuance of an Act.

Origin: ICTA s.234A(1); Annex 1, Change [jc670].

- (2) If the company makes a payment of dividend or interest into a bank or building society account held by any person the company must, within a reasonable period, send a tax certificate (see section 112) to either –
- (a) the bank or building society, or
  - (b) the person holding the account.

Origin: ICTA s.234A(3).

- (3) If the company makes a payment of dividend or interest to a person without paying it into a bank or building society account, the company must, within a reasonable period, send a tax certificate to that person.

Origin: ICTA s.234A(2).

**111 Duties of nominees [j5234a2]**

- (1) This section applies if –
- (a) a tax certificate is received by a person under section 110(2)(b) or (3), and
  - (b) the sum concerned (or part of it) –
    - (i) is paid to that person as nominee for another person, or
    - (ii) is paid into the account of that person as nominee for another person.

Origin: ICTA s.234A(4).

- (2) If the nominee pays the sum (or the part concerned) into a bank or building society account held by the other person the nominee must, within a reasonable period, send a tax certificate to either –
- (a) the bank or building society, or
  - (b) the other person.

Origin: ICTA s.234A(5).

- (3) If the nominee pays the sum (or the part concerned) to the other person without paying it into a bank or building society account held by that person, the nominee must, within a reasonable period, send a tax certificate to that person.

Origin: ICTA s.234A(4).

## 112 Meaning of “tax certificate” etc [j5234a3]

- (1) This section gives the meaning of “bank”, “send” and “tax certificate” in sections 110 and 111.

Origin: Drafting.

- (2) “Bank” has the meaning given by section 840A of ICTA.

Origin: ICTA s.234A(8A).

- (3) “Send” means send by post.

Origin: ICTA s.234A(8).

- (4) “Tax certificate”, in relation to a payment of dividend or interest, means a written statement showing –

- (a) the amount of the dividend or interest paid,
- (b) the date of the payment, and
- (c) the amount of the tax credit (under section 123(1) below or section 397(1) of ITTOIA 2005) to which an eligible person would be entitled in respect of the dividend or interest.

Origin: ICTA s.234A(7); Annex 1, Change [jc670].

- (5) In subsection (4)(c) “eligible person” means a person who is entitled to a tax credit in respect of the dividend or interest.

Origin: ICTA s.234A(7).

- (6) But for the purposes of subsection (4)(c) it does not matter whether or not any person is in fact entitled to a tax credit in respect of the dividend or interest.

Origin: ICTA s.234A(7).

## 113 Penalties [j5234a4]

- (1) A person who fails to comply with section 110(2) or (3) or section 111(2) or (3) is liable to a penalty of £60 for each offence.

Origin: ICTA s.234A(9).

- (2) But, in respect of offences connected with any one distribution of dividends or interest, the total amount of any penalties imposed on a person under subsection (1) must not exceed £600.

Origin: ICTA s.234A(9).

### *Powers to make regulations*

## 114 Power to modify or replace sections 108 and 109 [j5253]

- (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations modify, supplement or replace any of the provisions of sections 108 and 109 for the purpose stated in subsection (2).

Origin: ICTA s.253(1).

- (2) That is the purpose of requiring UK resident companies to –

(a) make returns, and  
(b) give information,  
to an officer of Revenue and Customs in respect of distributions made by the companies which are not qualifying distributions.

Origin: ICTA s.253(1).

- (3) References in this Act and in any other enactment to sections 108 and 109 are to be read as including a reference to any regulations made under this section.

Origin: ICTA s.253(1).

- (4) Regulations under this section may authorise the Commissioners to make special arrangements as regards the matters specified in subsection (5) if in their opinion there are circumstances justifying it.

Origin: ICTA s.253(3).

- (5) Those matters are –  
(a) the repayment of income tax borne by a company, and  
(b) the payment to a company of amounts in respect of any tax credit to which it is entitled.

Origin: ICTA s.253(3).

- (6) Regulations under this section may –  
(a) make different provision for different descriptions of companies and for different circumstances, and  
(b) contain incidental, supplemental, consequential and transitional provision and savings.

Origin: ICTA s.253(3).

- (7) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Origin: ICTA s.253(4).

#### **115 Alternative means of compliance with sections 110 and 111 [j5234a5]**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that a person may comply with section 110(2) or (3) or section 111(2) or (3) either –  
(a) by acting in accordance with the subsection concerned, or  
(b) by acting in accordance with rules contained in the regulations.

Origin: ICTA s.234A(10).

- (2) Regulations under subsection (1) may make different provision for different circumstances.

Origin: ICTA s.234A(11).

## CHAPTER 7

### INTERPRETATION OF PART

#### 116 Arrangements between companies [j52543a]

- (1) If two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may, for relevant purposes, be treated as if anything done by any one of those companies had been done by any one of the others.

Origin: ICTA s.254(8).

- (2) In subsection (1) "relevant purposes" means the purposes of—
  - (a) this Part, except sections 22, 59 to 63 and 69 to 75,
  - (b) section 123, and
  - (c) [sections 231AA and 231AB of ICTA].

Origin: ICTA s.254(8).

#### 117 "In respect of shares" [j52541b]

- (1) In this Part "in respect of shares in the company", in relation to a company which is a member of a 90% group, means in respect of shares in—
  - (a) that company, or
  - (b) any other company in the group.

Origin: ICTA s.254(2).

- (2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.

Origin: ICTA s.254(4).

- (3) For the purposes of this Part a thing is regarded as done in respect of a share if it is done to a person—
  - (a) as the holder of the share, or
  - (b) as the person who held the share at a particular time.

Origin: ICTA s.254(12).

- (4) For the purposes of this Part a thing is also regarded as done in respect of a share if it is done in pursuance of a right granted, or an offer made, in respect of a share.

Origin: ICTA s.254(12).

- (5) Subsections (3) and (4) do not affect the meaning of "in respect of shares" in section 59 (building society payments).

Origin: Drafting.

- (6) In this section "90% group" means a company and all its 90% subsidiaries.

Origin: ICTA s.254(1).

**118 “In respect of securities” [j52541c]**

- (1) In this Part “in respect of securities of the company”, in relation to a company which is a member of a 90% group, means in respect of securities of –
- (a) that company, or
  - (b) any other company in the group.

Origin: ICTA s.254(2).

- (2) Nothing in subsection (1) requires a company to be treated as making a distribution to any company which is in the same group and is UK resident.

Origin: ICTA s.254(4).

- (3) For the purposes of this Part, except where the context otherwise requires –
- (a) interest paid by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced,
- is treated as if paid, or given, in respect of a security issued for the advance by the company.

Origin: ICTA s.254(1).

- (4) For the purposes of this Part a thing is regarded as done in respect of a security if it is done to a person –
- (a) as the holder of the security, or
  - (b) as the person who held the security at a particular time.

Origin: ICTA s.254(12).

- (5) For the purposes of this Part a thing is also regarded as done in respect of a security if it is done in pursuance of a right granted, or an offer made, in respect of a security.

Origin: ICTA s.254(12).

- (6) In this section “90% group” means a company and all its 90% subsidiaries.

Origin: ICTA s.254(1).

**119 “New consideration” [j52542]**

- (1) In this Part, unless the context otherwise requires –
- (a) “new consideration” means consideration not provided (directly or indirectly) out of assets of the company, and
  - (b) in particular, “new consideration” does not include amounts retained by the company by way of capitalising a distribution.

But paragraph (a) is subject to the other subsections of this section.

Origin: ICTA s.254(1).

- (2) Subsection (3) applies if –
- (a) share capital has been issued at a premium representing new consideration, and
  - (b) any part (“the applied part”) of that premium is afterwards applied in paying up share capital.

Origin: ICTA s.254(5).

- (3) The applied part of the premium is also treated as new consideration for that share capital.

But the premium is not so treated so far as it has been taken into account under section 27(2) so as to enable a distribution to be treated as a repayment of share capital.

Origin: ICTA s.254(5).

- (4) The general rule is that no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, is to be treated for the purposes of this Part as new consideration.

Origin: ICTA s.254(6).

- (5) The general rule in subsection (4) applies unless the consideration consists of –
- (a) money or value received from the company as a qualifying distribution,
  - (b) money or value received from the company as a payment which for the purposes of this Part constitutes a repayment of the share capital in question, or of the principal secured by the security in question, or
  - (c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

This is subject to subsection (6).

Origin: ICTA s.254(6).

- (6) No amount is regarded as new consideration by virtue of subsection (5)(b) or (c) so far as it exceeds –
- (a) any new consideration received by the company for the issue of the share capital or security in question, or
  - (b) in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.

Origin: ICTA s.254(7).

## 120 References to married persons, or civil partners, living together [j51011]

Individuals who are married to, or are civil partners of, each other are treated for the purposes of this Part as living together unless –

- (a) they are separated under an order of a court of competent jurisdiction,
- (b) they are separated by a deed of separation, or
- (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

Origin: ITA 2007 s.1011.

## 121 Other interpretation [j52543]

- (1) In this Part, except where the context otherwise requires –
- “security” includes securities not creating or evidencing a charge on assets, and
  - “share” includes stock, and any other interest of a member in a company.

Origin: ICTA s.218(1), s.254(1); drafting.

- (2) Subsection (1) does not affect the meaning of “share” in section 59 (building society payments).

*Origin: Drafting.*

- (3) For the purposes of this Part a distribution is treated as made out of assets of a company if the cost falls on the company.

*Origin: ICTA s.254(9).*

- (4) For the purposes of this Part consideration is treated as provided out of assets of a company if the cost falls on the company.

*Origin: ICTA s.254(9).*

- (5) References in this Part to issuing share capital as paid up also apply to the paying up of any issued share capital.

*Origin: ICTA s.254(10).*

- (6) If securities –

(a) are issued at a price less than the amount repayable on them, and

(b) are not listed on a recognised stock exchange,

then, for the purposes of this Part the principal secured is not taken to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities listed on a recognised stock exchange.

*Origin: ICTA s.254(11).*

- (7) For the purposes of this Part, if something done in respect of shares is done by reference to share holdings at a particular time, it is regarded as done –

(a) to the then holders of the shares, or

(b) to the personal representatives of any holder then dead.

*Origin: ICTA s.254(12).*

## PART 2

### GENERAL

#### CHAPTER 1

##### TAX CREDITS, FRANKED INVESTMENT INCOME AND QUALIFYING DISTRIBUTIONS

## 122 Overview of Chapter [\[j5231a\]](#)

- (1) This Chapter –

(a) makes provision about the entitlement of UK resident companies to tax credits in respect of qualifying distributions, and

(b) includes provision about the recovery of amounts relating to tax credits.

*Origin: Drafting.*

- (2) This Chapter also contains the definitions of “franked investment income” and “qualifying distribution”.

*Origin: Drafting.*

### 123 Tax credits for certain recipients of qualifying distributions [j5231]

- (1) A UK resident company which receives a qualifying distribution made by another UK resident company is entitled to a tax credit equal to one-ninth of the amount or value of the distribution (but see subsection (3)).

Origin: ICTA s.231(1), (1A).

- (2) If a distribution is, or is treated under any provision of the Tax Acts as, the income of a person (“P”) other than the recipient (“R”), P (not R) is treated as receiving it for the purposes of this section (and so P (not R) is entitled to a tax credit if P falls within subsection (1)).

Origin: ICTA s.231(4).

- (3) This section is subject to the following provisions –
  - (a) section 231AA of ICTA (no tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement),
  - (b) section 231AB of ICTA (no tax credit for original owner under repurchase agreement in respect of certain manufactured dividends), and
  - (c) section 219(4B) of FA 1994 (no tax credit for distributions in respect of assets in Lloyd’s member’s premium trust fund).

Origin: ICTA s.231(1).

### 124 Recovery of overpaid tax credit etc [j52521]

- (1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).

Origin: ICTA s.252(1).

- (2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.

Origin: ICTA s.252(1).

- (3) The officer may make any assessment that in the officer’s judgement is needed to recover –
  - (a) any corporation tax that should have been paid, or
  - (b) any payment of tax credit that should not have been made.

Origin: ICTA s.252(1).

- (4) More generally, the officer may make any assessment that in the officer’s judgement is needed to secure that the liabilities to corporation tax (and any liabilities to interest on corporation tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.

Origin: ICTA s.252(1).

- (5) Subsection (6) applies if –
  - (a) interest on a payment of tax credit comprised in any franked investment income has been paid under section 826 of ICTA, and
  - (b) interest should not have been paid on the payment, or should only have been paid on part of it.

Origin: ICTA s.252(2).

- (6) An officer of Revenue and Customs may make an assessment for recovering the interest, so far as it should not have been paid.

Origin: ICTA s.252(2).

## 125 Section 124: supplementary [j52522]

- (1) If—
- (a) an assessment is made under section 124 to recover tax credit paid to a company in respect of franked investment income received in an accounting period, and
  - (b) more than one payment of tax credit was made in respect of that period, then as far as possible a sum recovered is treated as relating to a payment of tax credit made later rather than to one made earlier.

Origin: ICTA s.252(3).

- (2) TMA 1970 applies to an assessment under section 124 for recovering a payment of tax credit, or of interest on a tax credit—
- (a) as if it were an assessment to corporation tax for the accounting period in respect of which the payment was claimed, and
  - (b) and as if the payment represented a loss of tax to the Crown.

Origin: ICTA s.252(5).

- (3) Any sum charged by an assessment under section 124 is due within 14 days after the notice of assessment is issued.

Origin: ICTA s.252(5).

- (4) The duty to comply with subsection (3) is subject to any appeal against the assessment.

Origin: ICTA s.252(5).

## 126 Meaning of “franked investment income” [j5fii]

- (1) In the Corporation Tax Acts “franked investment income” means income of a UK resident company which consists of a distribution in respect of which the company is entitled to a tax credit.

Origin: ICTA s.832(1).

- (2) The amount of any franked investment income is the total of the amount or value of the distribution and the amount of the tax credit.

Origin: ICTA s.832(1).

## 127 Meaning of “qualifying distribution” [j514]

- (1) In the enactments relating to corporation tax “qualifying distribution” means any distribution, except—
- (a) one which is a distribution only because it falls within paragraph C or D of the section 4(1) list (redeemable share capital or security issued in respect of shares in, or securities of, the company), or

- (b) a distribution which is derived from a distribution that falls within paragraph (a).

Origin: ICTA s.14(2), s.832(1).

- (2) A distribution made by a company (“A”) is derived from a distribution that falls within subsection (1)(a) if it consists of share capital or a security which A has received (directly or indirectly) from another company which issued the share capital or security by way of a distribution that falls within subsection (1)(a).

Origin: ICTA s.14(2).

## SCHEDULES

## SCHEDULE 1

Section [j999996]

## MINOR AND CONSEQUENTIAL AMENDMENTS [j2ADIS]

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 1 The Income Tax (Trading and Other Income) Act 2005 is amended as follows.
- 2 In Chapter 3 of Part 4, after section 401 insert –
 

**“401A Recovery of overpaid tax credit etc**

  - (1) If an officer of Revenue and Customs discovers that a payment or set-off of tax credit should not have been made or is excessive, the officer may act in accordance with subsection (3) or (4).
  - (2) For the purposes of subsection (1) it does not matter whether the payment or set-off was excessive when made or became so later.
  - (3) The officer may make any assessment that in the officer’s judgement is needed to recover –
    - (a) any income tax that should have been paid, or
    - (b) any payment of tax credit that should not have been made.
  - (4) More generally, the officer may make any assessment that in the officer’s judgement is needed to secure that the liabilities to income tax (and any liabilities to interest on income tax) of the persons concerned are what they would have been if only the correct set-offs and payments had been made.
  - (5) TMA 1970 applies to an assessment under this section for recovering a payment of tax credit, or of interest on a tax credit –
    - (a) as if it were an assessment to income tax for the tax year in respect of which the payment was claimed, and
    - (b) and as if the payment represented a loss of tax to the Crown.
  - (6) Any sum charged by an assessment under this section is due within 14 days after the notice of assessment is issued.
  - (7) The duty to comply with subsection (6) is subject to any appeal against the assessment.”

Origin: ICTA s.252(1), (5).

- 3 (1) Amend section 410 as follows.

(2) For subsection (1) substitute –

- “(1) This section applies to –
- (a) share capital issued by a UK resident company in lieu of a cash dividend, and
  - (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.

(1A) For the purposes of subsection (1)(b), shares are of a qualifying class if –

- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
- (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.”

(3) After subsection (7) insert –

- “(8) There are special rules in paragraph 78A of Schedule 2 for share capital issued in respect of shares issued before 6 April 1975.”

4 After section 410 insert –

**“410A Conversion etc of bonus share capital**

- (1) This section applies if bonus share capital falling within section 410(1)(b) is converted into, or exchanged for, shares in the company of a different class.
- (2) Section 410 does not apply to any shares in the company issued –
  - (a) in connection with the conversion or exchange, and
  - (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.”

[Origin: ICTA s.249\(9\).](#)

5 After section 414 insert –

**“414A Interpretation of Chapter**

- (1) In this Chapter “bonus share capital” means –
  - (a) share capital issued otherwise than wholly for new consideration, or
  - (b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.
- (2) For the purposes of this Chapter share capital is issued by a company in lieu of a cash dividend if –
  - (a) it is issued in consequence of the exercise by any person of an option conferred on the person, and
  - (b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.
- (3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only –
  - (a) if the person is required to choose one or the other, but also

- (b) if the person is offered the one subject to a right, however expressed, to choose the other instead.
- (4) The reference in subsection (2) to a person’s exercise of an option includes a person’s abandonment of, or failure to exercise, a right such as is mentioned in subsection (3)(b).
- (5) In this Chapter “share” includes stock, and any other interest of a member in a company.
- (6) If two or more companies enter into arrangements to make distributions to each other’s members, all parties concerned (however many) may, for the purposes of this Chapter, be treated as if anything done by any one of those companies had been done by any one of the others.
- (7) The following apply in relation to this Chapter as they apply in relation to Part [Company distributions] of [Bill 6] –
  - (a) section 117 (“in respect of shares”) of [Bill 6],
  - (b) section 119 (“new consideration”) of [Bill 6].”

Origin: ICTA s.251(1), s.254(1), (2), (5), (6), (7), (8), (12).

6 In Schedule 2 (transitionals and savings etc) after paragraph 78 insert –

*“Stock dividends issued in respect of shares issued before 6 April 1975*

- 78A (1) This paragraph applies if –
- (a) share capital is issued by a UK resident company in respect of shares in the company issued before 6 April 1975 (“the old shares”),
  - (b) the old shares confer on the holder a right to convert them into, or exchange them for, shares of a different class, and
  - (c) as a result of the issue of the share capital, income would (apart from this paragraph) be treated as arising under section 410(2), (3) or (4) (stock dividend income).
- (2) Section 410 does not apply to the protected part of any bonus share capital issued by the company in connection with an exercise of that right.
  - (3) For the purposes of sub-paragraph (2), the protected part of the bonus share capital is however much of it (if any) would have been issued if the right had been exercised so as to bring about the conversion or exchange of the shares on the earliest possible date after 5 April 1975.
  - (4) In this paragraph “share” includes stock, and any other interest of a member in a company
  - (5) Section 117 of [Bill 6] (meaning of “in respect of shares”) applies in relation to this paragraph as it applies in relation to Part [Company distributions] of [Bill 6].”

Origin: ICTA s.249(8).

SCHEDULE 2

Section {j999997}

TRANSITIONALS AND SAVINGS [J3DIS]

PART 1

COMPANY DISTRIBUTIONS

*Amount of principal secured: non-commercial securities*

- 1 Section 10(1) applies only to securities issued after 5 April 1972.

Origin: ICTA s.209(3).

*Meaning of “special securities”*

- 2 (1) Securities do not meet Condition A in section 18 if they were issued –  
(a) before 6 April 1965 in respect of shares, or  
(b) before 6 April 1972 in respect of securities.

Origin: ICTA s.209(2).

- (2) Securities do not fall within section 18(3)(a)(ii) if they were issued before 6 April 1972.

Origin: ICTA s.209(2).

*Amount of principal secured: special securities*

- 3 Section 21(1) applies only to securities issued after 5 April 1972.

Origin: ICTA s.209(3).

*Bonus issue following repayment of share capital*

- 4 (1) Section 25(2) (amount paid up on bonus share capital treated as a distribution) does not apply if the share capital mentioned in section 25(1)(a) was repaid before 7 April 1965.

Origin: ICTA s.210(1).

- (2) Section 25(4) (which limits the cases in which section 25(2) applies) applies only if the preference shares were issued before 7 April 1965 (but see subparagraph (3)).

Origin: ICTA s.210(2).

- (3) Section 25(2) (amount paid up on bonus share capital treated as a distribution) does not apply if the repaid share capital referred to in section 25(1) consists of fully paid preference shares and –

(a) those shares existed as issued and fully paid preference shares on 6 April 1965, and

(b) throughout the period from that date until the repayment those shares continued to be fully paid preference shares.

Origin: ICTA s.210(2).

- (4) In order for section 25(5) to apply the issue of share capital there mentioned must take place after 5 April 1973 (as well as more than 10 years after the repayment of share capital in question).

[Origin: ICTA s.210\(3\).](#)

*Share capital issued as paid up otherwise than by receipt of new consideration*

- 5 (1) In relation to share capital issued before 7 April 1973 –
- (a) section 28(1)(b) applies with the substitution of “distribution” for “qualifying distribution”, and
  - (b) section 29(2)(b) applies with the substitution of “distributions” for “qualifying distributions”.

[Origin: ICTA s.211\(1\).](#)

- (2) Section 28 does not apply if the share capital mentioned in subsection (1) of that section was issued before 7 April 1965.

[Origin: ICTA s.211\(1\).](#)

- (3) The reference in section 29(2)(a) to amounts paid up on shares does not include amounts paid up before 7 April 1965.

[Origin: ICTA s.211\(1\).](#)

*Interest etc paid in respect of certain securities*

- 6 (1) Section 34(1) does not apply in the case of any interest or other distribution which is paid in respect of a security of the borrower that meets Condition C in section 18 (securities under which the consideration for the use of the principal secured is dependent on the results of the company’s business) if –
- (a) the principal secured does not exceed £100,000,
  - (b) the borrower is under an obligation to repay the principal and interest before the end of the period of 5 years beginning on the date on which the principal was paid to the borrower,
  - (c) that obligation was entered into before 9 March 1982 or was entered into before 1 July 1982 in pursuance of negotiations which were in progress on 9 March 1982, and
  - (d) where the period for repayment of either principal or interest is extended after 8 March 1982 (but paragraph (b) still applies), the interest or other distribution is paid within the period applicable immediately before that date.

[Origin: ICTA s.212\(2\).](#)

- (2) For the purposes of sub-paragraph (1)(c) negotiations are not regarded as having been in progress on 9 March 1982 unless, before that date, the borrower –
- (a) had applied to the lender for a loan, and
  - (b) had supplied the lender with any documents required by the lender to support the application.

[Origin: ICTA s.212\(2\).](#)

*Stock dividends*

- 7 (1) This paragraph applies if—
- (a) share capital is issued by a UK resident company in respect of shares in the company issued before 6 April 1975 (“the old shares”),
  - (b) the old shares confer on the holder a right to convert them into, or exchange them for, shares of a different class, and
  - (c) the case falls within section 410(2), (3) or (4) of ITTOIA 2005 (whether or not that section in fact applies).
- (2) Section 53 (stock dividends) does not apply to the protected part of any bonus share capital issued by the company in connection with an exercise of the right mentioned in sub-paragraph (1)(b).
- (3) For the purposes of sub-paragraph (2), the protected part of the bonus share capital is however much of it (if any) would have been issued if the right had been exercised so as to bring about the conversion or exchange of the shares on the earliest possible date after 5 April 1975.

Origin: ICTA s.249(8).

*Recovery of overpaid tax credits etc*

- 8 Section 124(5) and (6) and section 125(1) do not apply to payments of tax credit claimed in respect of accounting periods ending before 1 October 1993.

Origin: ICTA s.252(4).