

Bill 6: Distributions: Revision to clause 1080 (j52132)

Introduction

1. This paper presents a revised version of the clause which appeared as clause 1080 (j52132) in the updated version of Bill 6 published in August. It now appears as clause 1081 following further work on the Bill.

2. Also attached are:

- a paragraph for inclusion in Schedule 2,
- an entry for the repeals Schedule (dealing with the regulations to be made under section 2(2) of the European Communities Act 1972 (ECA)),
- an explanatory note, and
- a proposed change in the law.

3. The revision to clause 1080 involves the substitution in subsection (1) of the words “resident in a member State” for the words “UK resident”. The revision and the related matters are needed to take account of a recent proposal by HMRC to amend section 213(4) of ICTA by secondary legislation under powers given by section 2(2) of ECA and are proposed on the basis that the amendment (substituting “a member State” for “the United Kingdom”) will be made so as to come into force before Bill 6 is introduced.

4. The proposed change is favourable to taxpayers in principle and may benefit some in practice. It involves extending the amendment to be made by secondary legislation, which will have effect in relation to distributions made on or after the date on which the instrument comes into force, to cover all distributions arising in a chargeable period to which the Bill applies. This effect is achieved, first, by not including a transitional provision to carry forward the effect of the provision about the application of the amendment and, second, by disapplying paragraph 8(1) of Schedule 2 to the Bill which would otherwise have the effect of preserving the effect of the transitional provision in the secondary legislation which is repealed by the Bill.

5. The purpose of the proposed secondary legislation is to ensure that the UK is fully compliant with its obligations under Directive 90/434/EEC of the European Council and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. The purpose of the proposed change is to ensure, having regard to the need for a statement of compatibility under section 19 of the Human Rights Act 1998, that the law to be enacted in the Bill is similarly compliant.

Questions for the committee

6. We would be grateful for any comments you may have on these draft provisions and the proposed change in the law.

Closing date for comments

7. This recent proposal relating to section 213 of ICTA and affecting the rewrite in clause 1080 (j52132) arises close to the time when Bill 6 is to be introduced in Parliament. We would be grateful for any comments as soon as possible and in any event by 12 November 2009. If possible, they should be sent by e-mail to:

jackie.bartlett@hmrc.gsi.gov.uk

Written comments should be sent to:

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8. Please note that the names of respondents may be published unless they ask for their comments to be treated in confidence.

22 October 2009

1081 General conditions [j52132]

- (1) Condition A is that each relevant company must be resident in a member State 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 {j5213z}(a) or {j5213}(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 {j5214b65}),
 - (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 {j5214b63}(1)(b),
and

“tax” includes stamp duty and stamp duty land tax.

Origin: ICTA s.213(11).

Clause 1081: General conditions

1. This clause sets out the conditions (A to D) for an exempt distribution to be treated as such, and covers all exempt distributions of the first or second type – see clauses 1076 and 1077. It is based on section 213(4), (5), (10) and (11) of ICTA.

2. *Subsection (1)* reflects the amendment of section 213(4) of ICTA by the Corporation Tax (Implementation of the Mergers Directive) Regulations 2009 (SI 2009/xxxx). The regulations substituted the words “resident in a member State” for the words “UK resident” to ensure that the United Kingdom is fully compliant in this context with its obligations under Directive 90/434/EEC of the European Council and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

3. The clause is supplemented by clauses 1082 and 1083 which set out conditions that must be met in relation to specific types of exempt distribution.

Paragraph 95 of Schedule 2

4. The paragraph headed “exempt distributions” switches off paragraph 8(1) of this Schedule (which preserves the effect of a transitional or savings provision repealed by this Bill) in respect of the repeal by this Bill of the Corporation Tax (Implementation of the Mergers Directive) Regulations 2009 (SI 2009/xxxx). The regulations amended section 213(4) of ICTA which is the origin for clause 1081(1). The paragraph does so to allow the rule in clause 1081(1) to apply to the whole of the first accounting period of a company to which this Bill applies (that is, the first accounting period to end on or after 1 April 2010) rather than only to the part of that accounting period that follows the effective date of those regulations. This paragraph ensures, having regard to the need for a statement of compatibility under section 19 of the Human Rights Act 1998, that the law enacted in the Bill is compliant with the United Kingdom’s obligations under Directive 90/434/EEC of the European Council and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. See *Change 67* in Annex 1.

Change 67: Company distributions: demergers: Schedule 2

This change disapplies paragraph 8(1) of Schedule 2 in respect of the repeal by this Bill of regulations that amend the source legislation for clause 1081(1). As a result, the rule in that subsection applies to the whole of the first accounting period of a company to which this Bill has effect.

Section 213 of ICTA provides that certain distributions made in the course of a demerger are excluded from references to “distribution” in the Corporation Tax Acts (see the definition of that term in section 832(1) of ICTA). The Corporation Tax (Implementation of the Mergers Directive) Regulations 2009 (SI 2009/xxxx) amended section 213(4) of ICTA, substituting the words “resident in a member State” for the words “UK resident” in setting out a condition applying to companies relevant to the demerger. The regulations ensure that the United Kingdom is, in respect of distributions in a demerger, fully compliant with its obligations under Directive 90/434/EEC of the European Council and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. The effect of the amendment is to increase the number of cases in which distributions in the course of a demerger are exempt distributions (and are therefore taken out of the charge to corporation tax on income). Clause 1081(1) rewrites section 213(4) of ICTA as so amended, and accordingly provides that one condition for exemption under the provisions about exempt distributions is that “each relevant company must be resident in a member State at the time of the distribution”.

The regulations came into force on [xxxx] and have effect in relation to distributions falling within section 213(3) of ICTA made on or after [xxxx]. The Bill repeals the regulations in full. Paragraph 8(1) of Schedule 2 preserves the remaining force of a transitional or saving provision associated with a provision rewritten by the Bill notwithstanding the repeal by the Bill of that transitional or saving provision. But for the change made by the present paragraph, the application of the amendment made by the regulations to distributions made on or after [xxxx] would continue to have effect for the first accounting period of a company to which this Bill has effect.

The Bill comes into force on 1 April 2010 and has effect for corporation tax purposes for accounting periods ending on or after that day. It therefore applies to accounting periods beginning as early as 2 April 2009. Because of the change made by this paragraph, the law as restated in clause 1081(1) applies to any distribution made in that first accounting period. There is therefore no question of having to apply different rules (that is, those in this Bill and those as they existed in ICTA before the regulations had effect) to the same accounting period. This change ensures, having regard to the need for a statement of compatibility under section 19 of the Human Rights Act 1998, that the law to be enacted in the Bill is also compliant with the United Kingdom’s obligations under Directive 90/434/EEC of the European Council and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

The change may further increase the number of cases in which distributions in the course of a demerger are exempt distributions. That will reduce the incidence of the charge to corporation tax on income for those who benefit from the change.

This change is in taxpayers’ favour in principle and may benefit some in practice. But the numbers affected and the amounts involved are likely to be small.

SCHEDULE 2

Section {}

REPEALS AND REVOCATIONS [J4AGR]

REPEALS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Corporation Tax (Implementation of the Mergers Directive) Regulations 2009 (S.I. 2009/ [])	The whole instrument.

SCHEDULE 2

Section [\[ref\]](#)TRANSITIONALS AND SAVINGS ETC [\[3ME\]](#)

PART 1

COMPANY DISTRIBUTIONS

Exempt distributions

- 1 Paragraph 8(1) (saving for certain provisions repealed by this Act that relate to the commencement of provisions rewritten in this Act) does not have effect in relation to the repeal by this Act of regulation 1(3) of the Corporation Tax (Implementation of the Mergers Directive) Regulations 2009 (S.I. 2009/[]).

[Origin: Annex 1, Change \[jc689\].](#)