

Close Companies

CONTENTS

PART 1

CLOSE COMPANIES

CHAPTER 1

OVERVIEW OF PART

- 1 Overview of Part [j7414g]

CHAPTER 2

BASIC DEFINITIONS

Meaning of some expressions in this Part

- 2 Meaning of “associate” [j7417a]
- 3 Meaning of “associated company” [j7416a]
- 4 Meaning of “control” [j7416]
- 5 Section 4: rights to be attributed etc [j7416b]
- 6 Meaning of “director” [j7417b]
- 7 Meaning of “loan creditor” [j7417c]
- 8 Meaning of “participator” [j7417]

Meaning of "close company": general

- 9 Meaning of “close company” [j7414]
- 10 Meaning of “majority winding up rights” and “relevant winding up rights” [j7414a]
- 11 Treatment of some persons as participators or directors for the purposes of section 9(3) [j7414d]

Companies which are not to be close companies

- 12 Particular types of company [j7414b]
- 13 Companies controlled by or on behalf of Crown [j7414i]
- 14 Companies involved with non-close companies [j7414h]
- 15 Section 14: registered pensions schemes [j7414j]

- 16 Particular types of quoted company [j7415a]
- 17 Section 16: meaning of “shares beneficially held by the public” etc [j7415]

CHAPTER 3

CHARGE TO TAX IN CASE OF LOAN TO PARTICIPATOR

Charge to tax in case of loan to participator

- 18 Charge to tax in case of loan to participator [j7419]

Exceptions to the charge to tax under section 18

- 19 Exceptions to the charge under section 18 [j7420]
- 20 Section 19: meaning of “material interest in a company” [j7420a]

Relief in case of repayment or release of loan

- 21 Relief in case of repayment or release of loan [j7419a]

Loan treated as made to participator

- 22 Loan treated as made to participator [j7422]

Loan treated as made by close company

- 23 Loan treated as made by close company [j7422a]
- 24 Exception to section 23 [j7422b]
- 25 Determination of particular questions as a result of section 23 [j7422c]

Taxation of debtor on release of loan to trustees of settlement which has ended

- 26 Taxation of debtor on release of loan to trustees of settlement which has ended [j7421]
- 27 Section 26: other person treated as releasing or writing off debt [j7421a]

CHAPTER 4

POWER TO OBTAIN INFORMATION

- 28 Power to obtain information [j7121]

PART 1

CLOSE COMPANIES

CHAPTER 1

OVERVIEW OF PART

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|----------|--|----------|
| 1 | Overview of Part [j7414g] | 5 |
| (1) | Chapter 2 defines some expressions used in this Part, including the expression “close company”.
Origin: Drafting. | |
| (2) | Chapter 3 imposes a charge to tax in connection with loans or advances by close companies to participators.
Origin: Drafting. | 10 |
| (3) | Chapter 4 contains a power to obtain information in connection with close companies.
Origin: Drafting. | |
| (4) | For the meaning of “participator”, see section 8.
Origin: Drafting. | 15 |

CHAPTER 2

BASIC DEFINITIONS

Meaning of some expressions in this Part

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|----------|--|-----------|
| 2 | Meaning of “associate” [j7417a] | 20 |
| (1) | In this Part “associate”, in relation to a person (“P”), means – | |
| (a) | any relative or partner of P, | |
| (b) | the trustees of any settlement in relation to which P is a settlor, | |
| (c) | the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor, | 25 |
| (d) | if P has an interest in any shares or obligations of a company which are subject to any trust, the trustees of any settlement concerned, | |
| (e) | if P – | |
| (i) | is a company, and | |

- (ii) has an interest in any shares or obligations of a company which are subject to any trust,
any other company which has an interest in those shares or obligations,
- (f) if P has an interest in any shares or obligations of a company which are part of the estate of a deceased person, the personal representatives of the deceased, or 5
- (g) if P –
 - (i) is a company, and
 - (ii) has an interest in any shares or obligations of a company which are part of the estate of a deceased person, 10
any other company which has an interest in those shares or obligations.

Origin: ICTA s.417(3).

- (2) In this section, “relative” means –
- (a) a spouse or civil partner,
 - (b) a parent or remoter forebear, 15
 - (c) a child or remoter issue, or
 - (d) a brother or sister.

Origin: ICTA s.417(4).

3 Meaning of “associated company” [j7416a]

For the purposes of this Part, a company is another’s “associated company” at a particular time if, at that time or at any other time within the preceding 12 months – 20

- (a) one of them has control of the other, or
- (b) both are under the control of the same person or persons.

Origin: ICTA s.416(1). 25

4 Meaning of “control” [j7416]

- (1) This section applies for the purpose of this Part.

Origin: ICTA s.416(2).

- (2) A person (“P”) is treated as having control of a company (“C”) if P – 30
- (a) exercises,
 - (b) is able to exercise, or
 - (c) is entitled to acquire,
direct or indirect control over C’s affairs.

Origin: ICTA s.416(2).

- (3) In particular, P is treated as having control of C if P possesses or is entitled to acquire – 35
- (a) the greater part of the share capital or issued share capital of C,
 - (b) the greater part of the voting power in C,
 - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or 40

- (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.

Origin: ICTA s.416(2). 5

- (4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).

Origin: ICTA s.416(2).

- (5) If two or more persons together satisfy any of the conditions in subsections (2) and (3), they are treated as having control of C. 10

Origin: ICTA s.416(3).

- (6) See also section 5 (section 4: rights to be attributed etc).

Origin: Drafting.

5 Section 4: rights to be attributed etc [j7416b]

- (1) This section applies for the purposes of section 4. 15

Origin: ICTA s.416(4), (5), (6).

- (2) 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.416(4). 20

- (3) If a person—
(a) possesses any rights or powers on behalf of another person (A), or
(b) may be required to exercise any rights or powers on A's direction or behalf,
those rights or powers are to be attributed to A. 25

Origin: ICTA s.416(5).

- (4) There may also be attributed to a person all the rights and powers—
(a) of any company of which the person has, or the person and associates of the person have, control,
(b) of any two or more companies within paragraph (a), 30
(c) of any associate of the person, or
(d) of any two or more associates of the person.

Origin: ICTA s.416(6).

- (5) The rights and powers which may be attributed under subsection (4)—
(a) include those attributed to a company or associate under subsection (3), 35
but
(b) do not include those attributed to an associate under subsection (4).

Origin: ICTA s.416(6).

- (6) Such attributions are to be made under subsection (4) as will result in a company being treated as under the control of 5 or fewer participators if it can be so treated.

[Origin: ICTA s.416\(6\).](#)

- (7) See also sections 9(6), 10(7), 16(5) and 17(6)) (which provide for the application of provisions of this section). 5

[Origin: Drafting.](#)

6 Meaning of “director” [j7417b]

- (1) In this Part, “director”, in relation to a company, includes –
- (a) a person occupying the position of director of the company, by whatever name called, 10
 - (b) a person in accordance with whose directions or instructions the directors of the company are accustomed to act, and
 - (c) a person within subsection (2).

[Origin: ICTA s.417\(5\).](#) 15

- (2) A person (P) is within this subsection if P –
- (a) is a manager of the company or otherwise concerned in the management of the company’s trade or business, and
 - (b) is –
 - (i) the beneficial owner of, or 20
 - (ii) directly or indirectly able to control,
 - at least 20% of the ordinary share capital of the company.

[Origin: ICTA s.417\(5\); drafting.](#)

- (3) For the purposes of subsection (2)(b), P is treated as owning or controlling (as the case may be) what any associate owns or controls. 25

[Origin: ICTA s.417\(6\); drafting.](#)

7 Meaning of “loan creditor” [j7417c]

- (1) For the purposes of this Part, “loan creditor”, in relation to a company, means a creditor –
- (a) in respect of any debt within subsection (2), or 30
 - (b) in respect of any redeemable loan capital issued by the company.
- But this is subject to subsection (4).

[Origin: ICTA s.417\(7\).](#)

- (2) Debt is within this subsection if it is incurred by the company –
- (a) for any money borrowed or capital assets acquired by the company, 35
 - (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 (including any premium on the debt).

[Origin: ICTA s.417\(7\).](#) 40

- (3) A person who –
- (a) is not the creditor in respect of any debt or loan capital to which subsection (1) applies, but
 - (b) has a beneficial interest in that debt or loan capital,
- is, to the extent of that interest, treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital (but this is subject to subsection (4)).

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Origin: ICTA s.417(8).

- (4) A person carrying on a business of banking is not treated as a loan creditor in respect of any debt or loan capital incurred or issued by the company for money lent by the person to the company in the ordinary course of that business.

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Origin: ICTA s.417(9).

8 Meaning of “participator” [j7417]

- (1) For the purposes of this Part, “participator”, in relation to a company, means a person having a share or interest in the capital or income of the company.

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Origin: ICTA s.417(1).

- (2) In particular, “participator” includes –
- (a) a person who possesses, or is entitled to acquire, share capital or voting rights in the company,
 - (b) a loan creditor of the company,
 - (c) a person who possesses a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,
 - (d) a person who is entitled to acquire such a right as is mentioned in paragraph (c), and
 - (e) a person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person’s benefit.

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Origin: ICTA s.417(1).

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- (3) For the purposes of subsection (2), a person is treated as entitled to do anything which the person –
- (a) is entitled to do at a future date, or
 - (b) will at a future date be entitled to do.

Origin: ICTA s.417(1).

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- (4) In subsection (2) “distribution” is to be construed without regard to [section j52092](2) (extended definition of distribution for close companies)].

Origin: ICTA s.417(1).

- (5) This section does not affect any provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

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Origin: ICTA s.417(2).

Meaning of "close company": general

9 Meaning of “close company” [j7414]

- (1) For the purposes of the Corporation Tax Acts, a “close company” is a company in relation to which condition A or B is met.

Origin: ICTA s.414(1), (2). 5

- (2) Condition A is that the company is under the control –
 (a) of 5 or fewer participators, or
 (b) of participators who are directors.

Origin: ICTA s.414(1).

- (3) Condition B is that – 10
 (a) 5 or fewer participators, or
 (b) participators who are directors,
 together possess or are entitled to acquire majority or relevant winding up rights in the company.

Origin: ICTA s.414(2); drafting. 15

- (4) For the meaning of “majority winding up rights” and “relevant winding up rights”, see section 10.

Origin: Drafting.

- (5) For exceptions to this section, see sections 12 to 16 (companies which are not to be close companies). 20

Origin: Drafting.

- (6) Section 5 (section 4: rights to be attributed etc) applies for the purposes of subsection (3) as it applies for the purposes of section 4.

Origin: ICTA s.414(2D).

- (7) See also section 11 (treatment of some persons as participators or directors for the purposes of subsection (3)). 25

Origin: Drafting.

10 Meaning of “majority winding up rights” and “relevant winding up rights” [j7414a]

- (1) This section applies for the purposes of section 9(3). 30

Origin: Drafting.

- (2) “Majority winding up rights” in a company are rights which would, in the event of the winding up of the company on the relevant assumption (see subsection (3)), entitle the persons mentioned in section 9(3)(a) or (b) to receive the greater part of the assets of the company which would then be available for distribution among the participators. 35

Origin: ICTA s.414(2); drafting.

- (3) “The relevant assumption”, in relation to the notional winding up of a company (“the relevant company”), is that the part of the assets available for

distribution among the participators which a person is entitled to receive is the sum of –

- (a) any part of those assets which the person would be entitled to receive in the event of the winding up of the relevant company, and
- (b) any part of those assets which the person would be entitled to receive if assumptions A and B were made.

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Origin: ICTA s.414(2A), (2B); drafting.

- (4) Assumption A is that any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding up were also wound up on the relevant assumption.

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Origin: ICTA s.414(2A); drafting.

- (5) Assumption B is that the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

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Origin: ICTA s.414(2A); drafting.

- (6) “Relevant winding up rights” in a company are rights which would be majority winding up rights in the company if there were disregarded any rights which any person (including any person mentioned in section 9(3)(a) or (b)) has as a loan creditor in relation to the company or any other company.

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Origin: ICTA s.414(2); drafting.

- (7) Section 5 (section 4: rights to be attributed etc) applies for the purposes of this section as it applies for the purposes of section 4.

Origin: ICTA s.414(2D).

11 Treatment of some persons as participators or directors for the purposes of section 9(3) [j7414d]

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- (1) The following provisions apply for the purpose of determining whether the persons mentioned in section 9(3)(a) or (b) together possess or are entitled to acquire majority or relevant winding up rights in a company.

Origin: ICTA s.414(2C).

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- (2) A person is to be treated as a participator in or director of a company (C) if the person is a participator in or director of any other company which would be entitled to receive assets in the notional winding up of C on the relevant assumption.

Origin: ICTA s.414(2C).

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- (3) No account is to be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

Origin: ICTA s.414(2C).

- (4) But subsection (3) does not apply for the purposes of the relevant assumption.

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Origin: ICTA s.414(2C).

- (5) In this section, “the relevant assumption” has the same meaning as in section 10.

[Origin: Drafting.](#)

Companies which are not to be close companies

- 12 Particular types of company [j7414b]** 5
- A company is not to be treated as a close company if—
- (a) it is non-UK resident,
 - (b) it is a registered industrial and provident society, or
 - (c) it is a building society.
- [Origin: ICTA s.414\(1\), \(2\).](#) 10
- 13 Companies controlled by or on behalf of Crown [j7414i]**
- (1) A company is not to be treated as a close company as a result of section 9(2) if it is controlled by or on behalf of the Crown.
[Origin: ICTA s.414\(1\).](#)
 - (2) A company is “controlled by or on behalf of the Crown”, for the purposes of this section, if it is under the control of— 15
 - (a) the Crown, or
 - (b) persons acting on behalf of the Crown, independently of any other person.

[Origin: ICTA s.414\(4\).](#) 20
 - (3) But a company is not controlled by or on behalf of the Crown, for the purposes of this section, if it is a close company as a result of being under the control of persons acting independently of the Crown.
[Origin: ICTA s.414\(4\).](#)
- 14 Companies involved with non-close companies [j7414h]** 25
- (1) A company is not to be treated as a close company if condition A or B is met.
[Origin: ICTA s.414\(5\).](#)
 - (2) Condition A is that the company— 30
 - (a) is controlled by one or more companies none of which is a close company, and
 - (b) cannot be treated as a close company except by taking, as one of the 5 or fewer participators requisite for its being so treated, a company which is not a close company.

[Origin: ICTA s.414\(5\).](#)
 - (3) Condition B is that the company— 35
 - (a) would not be a close company were it not for section 4(3)(d) or the reference to majority winding up rights in section 9(3), and

- (b) would not be a close company if the references in sections 4(3)(d) and 10(2) to participators did not include loan creditors which are companies other than close companies.

Origin: ICTA s.414(5).

- (4) References in subsections (2) and (3) to a close company include a company which, if UK resident, would be a close company. 5

Origin: ICTA s.414(6).

15 Section 14: registered pensions schemes [j7414j]

- (1) If shares in a company (“C”) are held on trust for a registered pension scheme, the persons holding the shares are to be treated, for the purposes of section 14(2) and (3) – 10
 - (a) as the beneficial owners of the shares, and
 - (b) in that capacity, as a company which is not a close company.

Origin: ICTA s.414(7).

- (2) But subsection (1) does not apply if the scheme is established wholly or mainly for the benefit of – 15
 - (a) directors, employees, past directors or past employees of a company within subsection (3), or
 - (b) dependants of an individual within paragraph (a).

- (3) The companies within this subsection are – 20
 - (a) C,
 - (b) an associated company of C,
 - (c) a company which is under the control of –
 - (i) a director of C,
 - (ii) an associate of a director of C, or 25
 - (iii) two or more persons each of whom is such a director or associate, and
 - (d) a close company.

Origin: ICTA s.414(7).

16 Particular types of quoted company [j7415a] 30

- (1) A company is not to be treated as a close company at a particular time if –
 - (a) shares in the company carrying at least 35% of the voting power in the company have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public,
 - (b) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and 35
 - (c) any such shares have within those 12 months been listed on such an exchange.

Origin: ICTA s.415(1).

- (2) But subsection (1) does not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company’s principal members exceeds 85%. 40

Origin: ICTA s.415(2).

- (3) For the purposes of this section, a person is a principal member of a company if the person possesses a percentage of the voting power in the company of more than 5% (but see subsection (4)).

Origin: ICTA s.415(6).

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- (4) If there are more than 5 persons within subsection (3), a person is a principal member of the company only if –

(a) the person is one of the 5 persons who possess the greatest percentages, or

(b) in a case where there are no such 5 persons because two or more persons possess equal percentages of the voting power in the company, the person is one of the 6 or more persons (including those two or more who possess equal percentages) who possess the greatest percentages.

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Origin: ICTA s.415(6).

- (5) In determining for the purposes of this section the voting power which a person possesses, there is to be attributed to the person any voting power which would be attributed to the person if section 5(3) to (6) applied for the purposes of this section.

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Origin: ICTA s.415(7).

- (6) In this section “shares” –

(a) include stock, but

(b) do not include shares entitled to a fixed rate of dividend.

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Origin: ICTA s.415(1), (8); drafting.

- (7) See also section 17 (section 16: meaning of “shares held beneficially by the public” etc).

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Origin: Drafting.

17 Section 16: meaning of “shares beneficially held by the public” etc [j7415]

- (1) For the purposes of section 16, shares in a company (C) are beneficially held by the public if they are –

(a) beneficially held by a UK resident company which is not a close company, or by a non-UK resident company which would not be a close company if it were UK resident,

(b) held on trust for a registered pension scheme, or

(c) not comprised in a principal member’s holding.

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Origin: ICTA s.415(3), (4).

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- (2) But shares are not beneficially held by the public if they are held –

(a) by a director of C,

(b) by an associate of such a director,

(c) by a company (D) which is under the control of one or more persons each of whom is such a director or associate,

(d) by an associated company (E) of C, or

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- (e) as part of a fund the capital or income of which is applicable or applied wholly or mainly for the benefit of any of individuals within subsection (3).
[Origin: ICTA s.415\(3\), \(5\).](#)
- (3) Those individuals are— 5
(a) employees, directors, past employees or past directors of C, D or E, and
(b) dependants of any individuals within paragraph (a).
[Origin: ICTA s.415\(5\).](#)
- (4) The reference in section 16(1) to shares which have been allotted unconditionally to, or acquired unconditionally by, the public is to be construed in accordance with subsections (1) to (3). 10
[Origin: ICTA s.415\(3\).](#)
- (5) For the purposes of subsection (1), a principal member’s holding consists of the shares which carry the voting power possessed by him. 15
[Origin: ICTA s.415\(6\).](#)
- (6) The reference in subsection (2) to shares held by any person includes shares the rights or powers attached to which would be attributed to the person if section 5(3) applied for the purposes of that subsection.
[Origin: ICTA s.415\(5\).](#)
- (7) Subsections (3) to (5) of section 16 (meaning of “principal member” and determination of voting power possessed) apply for the purposes of this section as they apply for the purposes of that section. 20
[Origin: ICTA s.415\(6\), \(7\).](#)
- (8) In this section, “shares” includes stock. 25
[Origin: ICTA s.415\(8\).](#)

CHAPTER 3

CHARGE TO TAX IN CASE OF LOAN TO PARTICIPATOR

Charge to tax in case of loan to participator

- 18 Charge to tax in case of loan to participator [j7419]**
- (1) This section applies if a close company makes a loan or advances money to a relevant person who is a participator in the company or an associate of such a participator. 30
[Origin: ICTA s.419\(1\).](#)
- (2) There is to be due from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to 25% of the amount of the loan or advance. 35
[Origin: ICTA s.419\(1\).](#)

(3)	Tax due under this section in relation to a loan or advance is to be due and payable in accordance with section 59D of TMA 1970 on the day following the end of the period of 9 months from the end of the accounting period in which the loan or advance was made.	5
	Origin: ICTA s.419(3).	
(4)	For the purposes of this section and sections 19 to 22, the cases in which a close company is to be treated as making a loan to a person include a case where – (a) that person incurs a debt to the close company, or (b) a debt due from that person to a third party is assigned to the close company.	10
	In such a case, the close company is to be treated as making a loan of an amount equal to the debt.	
	Origin: ICTA s.419(2).	
(5)	If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.	15
	Origin: ICTA s.419(7).	
(6)	In this Chapter, “relevant person” means – (a) an individual, or (b) a company receiving a loan or advance in a fiduciary or representative capacity.	20
	Origin: ICTA s.419(6).	
(7)	For exceptions to the charge under this section, see section 19.	
	Origin: Drafting.	
(8)	See also – (a) section 21 (relief in case of repayment or release of loan), (b) section 22 (loan treated as made to participators), and (c) sections 23 to 25 (loan treated as made by close companies).	25
	Origin: Drafting.	
<i>Exceptions to the charge to tax under section 18</i>		
19	Exceptions to the charge under section 18 [j7420]	30
(1)	Section 18 does not apply to a loan or advance made in the ordinary course of a business carried on by a company if the business includes the lending of money.	
	Origin: ICTA s.419(1).	
(2)	Section 18(4)(a) does not apply to a debt incurred for the supply by a close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds 6 months or is longer than that normally given to the company’s customers.	35
	Origin: ICTA s.420(1).	
(3)	Section 18 does not apply to a loan or advance made to –	40

- (a) a director of a close company,
 - (b) an employee of such a company,
 - (c) a director of an associated company of such a company, or
 - (d) an employee of such an associated company,
- if conditions A to C are met (but see subsection (7)). 5

Origin: ICTA s.420(2); Annex 1, Change [jc666].

- (4) Condition A is that –
- (a) the amount of the loan or advance does not exceed £15,000, and
 - (b) that amount does not exceed £15,000 when taken together with any other outstanding loans and advances which were made to the debtor by –
 - (i) the close company, or
 - (ii) any of its associated companies.
- 10

Origin: ICTA s.420(2); Annex 1, Change [jc666].

- (5) Condition B is that the debtor works full-time for the close company or any of its associated companies. 15

Origin: ICTA s.420(2).

- (6) Condition C is that the debtor does not have a material interest in the close company or in any of its associated companies.

Origin: ICTA s.420(2). 20

- (7) If the debtor acquires such a material interest at a time when the whole or part of any loan or advance within subsection (4) remains outstanding, the close company is to be treated as making to the debtor at that time a loan or advance of an amount equal to the sum outstanding.

Origin: ICTA s.420(2); Annex 1, Change [jc666]. 25

- (8) For the meaning of “material interest in a company”, see section 20.

Origin: Drafting.

20 Section 19: meaning of “material interest in a company” [j7420a]

- (1) A person has a material interest in a company for the purposes of section 19 if condition A or B is met. 30

Origin: ICTA s.420(2).

- (2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more such associates) is –
- (a) the beneficial owner of, or
 - (b) directly or indirectly able to control, 35
- more than 5% of the ordinary share capital of the company.

Origin: ICTA s.420(2); drafting.

- (3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more such associates) possesses or is entitled to acquire such rights as would – 40
- (a) in the event of the winding up of the company, or

(b) in any other circumstances, give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.

Origin: ICTA s.420(2).

Relief in case of repayment or release of loan 5

21 Relief in case of repayment or release of loan [j7419a]

- (1) Subsection (2) applies if a close company has made a loan or advance which gave rise to a charge to tax on the company under section 18.

Origin: ICTA s.419(4).

- (2) Relief is to be given from that tax, or a proportionate part of it, if – 10
- (a) the loan or advance or part of it is repaid to the company, or
 - (b) the whole or part of the debt in respect of the loan or advance is released or written off.

Origin: ICTA s.419(4).

- (3) Relief under this section is to be given on a claim, which must be made within 6 years from the end of the financial year in which the repayment is made or the release or writing off occurs. 15

Origin: ICTA s.419(4).

- (4) Subsection (5) applies if –
- (a) the repayment of the whole or part of a loan or advance occurs on or after the day on which tax under section 18 becomes due and payable in relation to the loan or advance, or 20
 - (b) the release or writing off of the whole or part of the debt in respect of a loan or advance occurs on or after the day on which tax under that section becomes due and payable in relation to the loan or advance. 25

Origin: ICTA s.419(4A).

- (5) Relief in respect of the repayment, release or writing off may not be given under this section at any time before the end of the period of 9 months from the end of the accounting period in which the repayment, release or writing off occurred. 30

Origin: ICTA s.419(4A).

- (6) Schedule 1A to TMA 1970 (claims and elections not included in return) applies to a claim for relief under this section unless –

- (a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and 35
- (b) the relief may be given at the time the claim is made.

Origin: ICTA s.419(4B).

Loan treated as made to participator

22 Loan treated as made to participator [j7422]

- (1) This section applies if under arrangements made by a person (P) –
- (a) a close company makes a loan or advance which, apart from this section, does not give rise to a charge to tax under section 18, and 5
 - (b) a person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, a relevant person who is a participator in the company or an associate of such a participator.
- Origin: ICTA s.419(5). 10
- (2) Sections 18 to 21 apply as if the loan or advance had been made to the relevant person.
- Origin: ICTA s.419(5).
- (3) But this section does not apply if –
- (a) the arrangements mentioned in subsection (1) are made by P in the ordinary course of a business carried on by P, or 15
 - (b) the total income of the relevant person includes, in respect of the matter mentioned in subsection (1)(b), an amount not less than the loan or advance.
- Origin: ICTA s.419(5). 20
- (4) If a company (C) controls another company (D), a participator in C is to be treated for the purposes of this section as being also a participator in D.
- Origin: ICTA s.419(7).

Loan treated as made by close company

23 Loan treated as made by close company [j7422a]

- (1) This section applies if a company (C) which is controlled by another company makes a loan or advance which, apart from this section, does not give rise to a charge to tax under section 18.
- Origin: ICTA s.422(1), (2), (6).
- (2) If C is controlled by a close company, sections 18 to 22 apply as if the loan or advance had been made by the close company. 30
- Origin: ICTA s.422(1), (6).
- (3) If C is not controlled by a close company but a close company subsequently acquires control of it, sections 18 to 22 apply as if the loan or advance had been made by the close company immediately after the time when it acquired control. 35
- Origin: ICTA s.422(2), (6).
- (4) If two or more close companies together control C, subsections (2) and (3) are to have effect –
- (a) as if each of them controlled C, and 40

- (b) as if the loan or advance had been made by each of those close companies.

But the loan or advance is to be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in C.

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Origin: ICTA s.422(3), (6).

- (5) For an exception to this section, see section 24.

Origin: ICTA s.422(1), (2).

- (6) See also section 25 (determination of particular questions as a result of this section).

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Origin: Drafting.

- (7) References in this section and sections 24 and 25 to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan because of section 18(4).

Origin: ICTA s.422(6).

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24 Exception to section 23 [j7422b]

- (1) Section 23 does not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by the person) as a result of which there is a connection –

- (a) between –

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- (i) the making of the loan or advance, and
(ii) the acquisition of control, or

- (b) between –

- (i) the making of the loan or advance, and
(ii) the provision by the close company of funds for C.

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Origin: ICTA s.422(4), (6).

- (2) The close company is to be treated for the purposes of subsection (1) as providing funds for C if it directly or indirectly makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, C.

Origin: ICTA s.422(4), (6).

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25 Determination of particular questions as a result of section 23 [j7422c]

- (1) This section applies if, as a result of section 23, sections 18 to 22 have effect as if a loan or advance made by C had been made by another company.

Origin: ICTA s.422(5), (6).

- (2) Any question under those sections whether –

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- (a) the company making the loan or advance did so in the ordinary course of a business carried on by it which includes the lending of money,
(b) the loan or advance or part of it has been repaid to the company, or
(c) the company has released or written off the whole or part of the debt in respect of the loan or advance,

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is to be determined by reference to C.

Origin: ICTA s.422(5), (6).

Taxation of debtor on release of loan to trustees of settlement which has ended

- 26 Taxation of debtor on release of loan to trustees of settlement which has ended [j7421]**
- (1) This section applies if conditions A to D are met. 5
Origin: ICTA s.421(1).
- (2) Condition A is that a company (X) is or has been assessed or is liable to be assessed under section 18 (charge to tax in the case of loan to participator) in respect of a loan or advance made to the trustees of a settlement. 10
Origin: ICTA s.421(1).
- (3) Condition B is that X releases or writes off the whole or part of the debt in respect of the loan or advance.
Origin: ICTA s.421(1).
- (4) Condition C is that the person from which the debt was due at the time of the release or writing off is a company (Y). 15
Origin: ICTA s.421(1); drafting.
- (5) Condition D is that the release or writing off takes place after the settlement has ended.
Origin: ICTA s.421(1).
- (6) For corporation tax purposes – 20
(a) income arises to Y at the time of the release or writing off, and
(b) it arises in the accounting period of Y in which the release or writing off takes place.
Origin: ICTA s.421(1); drafting.
- (7) The amount of the income that arises is equal to – 25

$$N + \left(N \times \frac{R}{100 - R} \right)$$

where –

N is the amount released or written off, and

R is a rate equal to the dividend ordinary rate specified in section 8(1) of ITA 2007. 30

Origin: ICTA s.421(1); drafting.

- 27 Section 26: other person treated as releasing or writing off debt [j7421a]**
- (1) This section applies if sections 18 to 22 have effect under section 23 (loan treated as made by close company) as if a loan or advance had been made by a company (“A”), rather than the company (“B”) which – 35

- (a) actually made it,
- (b) is regarded as having made it under section 18(4) (deemed loan where debt incurred or assigned to close company), or
- (c) would be so regarded if it were a close company.

Origin: ICTA s.422(5). 5

- (2) If the whole or part of the debt is released or written off by B, A rather than B is treated, for the purposes of section 26, as releasing it or writing it off.

Origin: ICTA s.422(5).

CHAPTER 4

POWER TO OBTAIN INFORMATION 10

28 Power to obtain information [j7121]

- (1) 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 may reasonably require for the purposes of the relevant provisions (see subsection (7)). 15

Origin: FA 1989 Sch.12 para.2; Annex 1, Change [jc608].

- (2) The notice under subsection (1) must specify the period within which the information must be provided and that period must be at least 30 days.

Origin: FA 1989 Sch.12 para.2.

- (3) An officer of Revenue and Customs may, for the purposes of the relevant provisions, by notice require any person in whose name any shares or loan capital are registered – 20

(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. 25

Origin: FA 1989 Sch.12 para.3.

- (4) Subsections (5) and (6) apply if a company (“the issuing company”) appears to an officer of Revenue and Customs to be a close company. 30

Origin: FA 1989 Sch.12 para.4.

- (5) The officer may, for the purposes of the relevant provisions, by notice require the issuing company to provide the officer with –

(a) particulars of any bearer securities issued by the company, 35

(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: FA 1989 Sch.12 para.4.

- (6) The officer may, for the purposes of the relevant provisions, by notice require – 40

- (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. 5

Origin: FA 1989 Sch.12 para.4.

- (7) In this section –
- “the relevant provisions” means –
 - (a) [sections 13, 13ZA and 13A of ICTA (small companies’ relief)], 10
 - (b) [section 231 of that Act (corporation tax: tax credits for certain recipients of qualifying distributions),]
 - (c) section 397 of ITTOIA 2005 (income tax: tax credits for certain recipients of qualifying distributions),
 - (d) Chapter 6 of Part 4 of that Act (release of loan to participator in close company), and 15
 - (e) Chapter 3 of this Part (charge to tax in case of loan to participator in close company), and
 - “securities” includes –
 - (a) shares, stocks, bonds, debentures and debenture stock, and 20
 - (b) any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.

Origin: FA 1989 Sch.12 paras.1, 4.