

# Bill 6

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### PART 1

#### CORPORATION TAX ACTS DEFINITIONS ETC

### CHAPTER 1

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## PART 1

### CORPORATION TAX ACTS DEFINITIONS ETC

#### CHAPTER 1

##### INVESTMENT TRUSTS

#### 1 Meaning of “investment trust” [j2750]

In the Corporation Tax Acts “investment trust”, with respect to an accounting period, means a company which –

- (a) is approved for the purposes of this Chapter for that period by the Commissioners for Her Majesty’s Revenue and Customs, and
- (b) is not a close company at any time in that period.

Origin: ICTA s.842(1).

#### 2 Conditions for approval [j2751]

- (1) The Commissioners for Her Majesty’s Revenue and Customs must not approve a company under section 1 for an accounting period unless it is shown to their satisfaction that each of conditions A to F is met.

##### *Condition A*

The company must be UK resident throughout the accounting period.

##### *Condition B*

The shares making up the company’s ordinary share capital (or if they are of more than one class, those of each class) must be included in the official UK list throughout the accounting period.

##### *Condition C*

The company’s income of the accounting period must be derived wholly or mainly from shares or securities.

##### *Condition D*

The company must not retain in respect of the accounting period an amount which is greater than 15% of the income it derives from shares or securities (but see section 4).

##### *Condition E*

The company must not at any time in the accounting period have a holding in a company that represents more than 15% by value of the company’s investments (but see section 5).

*Condition F*

The company's memorandum or articles of association must prohibit the distribution as dividend of surpluses arising from the realisation of investments.

Origin: ICTA s.842(1).

- (2) The conditions lettered A to F in subsection (1) are referred to by those letters in this Chapter.

Origin: Drafting.

**3 Calculation of income [j2758]**

- (1) Subsections (2) to (4) apply in determining, for the purposes of condition C or D (and accordingly of section 4(2)(a)), with respect to any accounting period of a company –
- (a) the amount of a company's income, or
  - (b) the amount of income which a company derives from shares or securities.

Origin: ICTA s.842(1AB), (2D), (3A); drafting.

- (2) The amounts to be brought into account under Part 5 of CTA 2009 in respect of the company's loan relationships are to be determined without reference to any debtor relationships of the company.

Origin: ICTA s.842(1AB).

- (3) The excess of –
- (a) any credits brought into account in respect of the accounting period by virtue of section 574 of CTA 2009 (non-trading credits in respect of derivative contracts), over
  - (b) any debits brought into account in respect of the accounting period by virtue of that section (non-trading debits in respect of derivative contracts),

is to be treated as income of the period which is derived from shares or securities.

Origin: ICTA s.842(2D), (2E).

- (4) Income treated as arising under section 761(1)(a) of ICTA (offshore income gains) is to be ignored.

Origin: ICTA s.842(3A).

- (5) In determining the amount of a company's income for the purposes of condition C, no account is to be taken of any amount treated under section 1229(3)(b) of CTA 2009 (claw back of relief for expenses of management) as a receipt chargeable under the charge to corporation tax on income.

Origin: ICTA s.842(1AC).

**4 The income retention condition: exceptions [j2756]**

- (1) Condition D does not apply in relation to an accounting period if the amount that the company would be required to distribute in order to meet the condition is less than –

- (a) £10,000, or
- (b) if the period is shorter than 12 months, a proportionately reduced amount.

Origin: ICTA s.842(2C).

- (2) Condition D does not apply in relation to an accounting period if –
  - (a) by virtue of a restriction imposed by law, the company is required to retain in respect of the period an amount of income that exceeds 15% of the income the company derives from shares and securities, and
  - (b) either –
    - (i) the amount of income that the company retains in respect of the accounting period does not exceed the amount of income that it is required to retain in respect of the period by virtue of a restriction imposed by law, or
    - (ii) if there is such an excess, the amount of the excess plus the amount of any income that the company distributes in respect of the period is less than £10,000.

Origin: ICTA s.842(2A), (2B).

- (3) If the accounting period mentioned in subsection (2) is shorter than 12 months, the amount of £10,000 mentioned in subsection (2)(b)(ii) is proportionately reduced.

Origin: ICTA s.842(2B).

## 5 The 15% holding limit: exceptions [j2752]

- (1) In condition E the reference to a holding in a company does not include a holding in –
  - (a) an investment trust, or
  - (b) a company that would qualify as an investment trust but for condition B (listing in the official UK list).

Origin: ICTA s.842(1).

- (2) Subsection (3) applies if a company has a holding in a company and immediately after –
  - (a) the time when the holding was acquired (if it has not been enlarged), or
  - (b) the most recent time when the holding was enlarged,the holding represented 15% or less by value of the company's investments.

Origin: ICTA s.842(2), (3).

- (3) The holding is treated for the purposes of condition E as continuing to represent 15% or less by value of the company's investments until the holding is next enlarged.

Origin: ICTA s.842(2).

- (4) If a company disposes of shares or securities from a holding in a company and immediately after the disposal the holding represents 15% or less by value of the company's investments, the holding is treated for the purposes of condition E as continuing to represent 15% or less by value of the company's investments until the holding is next enlarged.

Origin: Annex 1, Change [jc684].

- (5) If a holding which a company has in another company –
- (a) was acquired before 6 April 1965, and
  - (b) on 6 April 1965 represented 25% or less by value of the company's investments,
- condition E does not apply to the holding so long as it is not enlarged.

Origin: ICTA s.842(2).

## 6 Basic meaning of “holding in a company” [j2759]

- (1) In this Chapter “holding in a company” means the shares or securities (whether of one class or more than one class) held in any one company.

Origin: ICTA s.842(3).

- (2) For the purposes of section 5 a holding in a company is enlarged whenever the company whose holding it is –
- (a) acquires further shares or securities of the company, but
  - (b) does not do so by being allotted shares or securities without becoming liable to give any consideration.

Origin: ICTA s.842(3).

## 7 More about the meaning of “holding in a company” [j2753]

- (1) Subsection (2) applies if, in connection with a scheme of reconstruction –
- (a) a company issues shares or securities,
  - (b) the shares or securities are issued to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, and
  - (c) those persons do not become liable to give any consideration for the shares or securities.

Origin: ICTA s.842(3).

- (2) For the purposes of this Chapter-
- (a) a holding of the shares or securities of the second company, and
  - (b) a corresponding holding of the shares or securities issued by the first company,
- are to be regarded as the same holding.

Origin: ICTA s.842(3).

- (3) For the purposes of this Chapter, holdings in two or more companies which are members of the same group are treated as holdings in a single company.

Origin: ICTA s.842(1A).

- (4) Subsection (3) does not apply to a holding in –
- (a) an investment trust, or
  - (b) a company that would qualify as an investment trust but for condition B (listing in the official UK list).

Origin: ICTA s.842(1A).

- (5) For the purposes of subsection (3) it does not matter whether or not the group is one that includes the company which has the holdings.

Origin: ICTA s.842(1A).

- (6) If a company (“company A”) is a member of a group, money owed to it by another member of the group is treated, for the purpose of determining whether condition E is met –
- (a) as a security of the latter held by company A, and
  - (b) accordingly as, or as part of, the holding of company A in the company owing the money.

Origin: ICTA s.842(1A).

- (7) In this section “group” means a company and all its 51% subsidiaries.

Origin: ICTA s.842(4).

## 8 Other interpretation [j2754]

- (1) In this Chapter –  
“company” and “shares” are to be read in accordance with section 99 of TCGA 1992 (application of that Act to unit trust schemes), and  
“shares” includes “stock”.

Origin: ICTA s.842(4).

- (2) In this Chapter “scheme of reconstruction” has the same meaning as in section 136 of TCGA 1992.

Origin: ICTA s.842(4).