

Bill 6

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PART 1

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CHAPTER 1

RELIEF FOR SMALL COMPANIES

Introduction

1 Overview of Chapter [j2038]

- (1) This Chapter provides relief from corporation tax for certain companies whose profits fall within specified limits.

Origin: Drafting.

- (2) The relief is given under—
 - (a) section 2 (profits to be charged at the small companies' rate), or
 - (b) section 3 (marginal relief by way of a reduction in tax).

Origin: Drafting.

- (3) Section 4 sets out the small companies' rate limit and the upper limit.

Origin: Drafting.

- (4) Sections 5 to 9 are about the interpretation of references to associated companies.

Origin: Drafting.

- (5) Sections 10 to 12 give the meaning of “augmented profits” and “close investment-holding company” for this Chapter.

Origin: Drafting.

Relief for small companies

2 Profits charged at the small companies' rate [j2031]

Corporation tax is charged at the small companies' rate on a company's net profits of an accounting period if—

- (a) the company is UK resident in the accounting period,
- (b) it is not a close investment-holding company at the end of the period,
and
- (c) its augmented profits of the accounting period do not exceed the small companies' rate limit.

Origin: ICTA s.13(1), (8); Annex 1, Change {jc614}.

3 Marginal small companies' relief [j2032]

- (1) This section applies if –
- (a) a company is UK resident in an accounting period,
 - (b) it is not a close investment-holding company at the end of the period, and
 - (c) its augmented profits of the accounting period –
 - (i) exceed the small companies' rate limit, but
 - (ii) do not exceed the upper limit.

Origin: ICTA s.13(2).

- (2) The corporation tax charged on the company's net profits of the accounting period is reduced by an amount equal to the small companies' fraction of the reference amount.

Origin: ICTA s.13(2), (8); Annex 1, Change {jc614}.

- (3) The reference amount is –

$$(U - A) \times \frac{N}{A}$$

where –

- U is the upper limit,
- A is the amount of the augmented profits, and
- N is the amount of the net profits.

Origin: ICTA s.13(2), (8).

- (4) In this section “the small companies' fraction” means the fraction set by Parliament.

Origin: ICTA s.13(2).

Small companies' rate limit and upper limit

4 The small companies' rate limit and the upper limit [j2033]

- (1) If the company mentioned in section 2 or 3 has no associated company in the accounting period –
- (a) the small companies' rate limit is £300,000, and
 - (b) the upper limit is £1,500,000.

Origin: ICTA s.13(3).

- (2) Subsections (3) and (4) apply if the company mentioned in section 2 or 3 has one or more associated companies in the accounting period.

Origin: ICTA s.13(3).

- (3) The small companies rate limit is –

$$\frac{\pounds 300,000}{1 + N}$$

where N is the number of the associated companies.

Origin: ICTA s.13(3).

- (4) The upper limit is –

$$\frac{\pounds 1,500,000}{1 + N}$$

where N is the number of the associated companies.

Origin: ICTA s.13(3).

- (5) For an accounting period of less than 12 months the small companies' rate limit and the upper limit are proportionately reduced.

Origin: ICTA s.13(6).

5 Associated companies [j2034]

- (1) For the purposes of section 4, a company is another company's associated company in an accounting period if it is an associated company (see subsection (4)) for any part of the accounting period.

Origin: ICTA s.13(5).

- (2) The rule in subsection (1) applies to two or more associated companies even if they are associated companies for different parts of the accounting period.

Origin: ICTA s.13(5).

- (3) But an associated company is ignored for the purposes of section 4 if –
- it has not carried on a trade or business at any time in the accounting period, or
 - it was an associated company for part only of the accounting period, and has not carried on a trade or business at any time in that part of the accounting period.

Origin: ICTA s.13(4).

- (4) For the purposes of this Chapter, a company is an associated company of another at any time when –
- one of the two has control of the other, or
 - both are under the control of the same person or persons.

Origin: ICTA s.13(4).

- (5) In subsection (4) "control" has the meaning given by [section 416(2) to (6) of ICTA].

Origin: ICTA s.13(4).

- (6) In this section –
- (a) subsection (3) is subject to section 6, and
 - (b) subsections (4) and (5) are subject to sections 7, 8 and 9.

Origin: Annex 1, Change {jc615}; Annex 1, Change {jc616}.

6 Section 5(3): treatment of certain holding companies [j2034a]

- (1) This section applies if, throughout an accounting period, a company –
- (a) carries on no trade,
 - (b) has one or more 51% subsidiaries, and
 - (c) is a passive holding company.

Origin: Annex 1, Change {jc615}.

- (2) The company is treated for the purposes of section 5(3) as not carrying on a business at any time in the accounting period.

Origin: Annex 1, Change {jc615}.

- (3) A company is a passive holding company throughout an accounting period only if the following requirements are met –
- (a) it has no assets in that period, other than shares in companies which are its 51% subsidiaries,
 - (b) no income arises to it in that period other than dividends,
 - (c) if income arises to it in that period in the form of dividends –
 - (i) the redistribution condition is met (see subsection (4)), and
 - (ii) the dividends are franked investment income received by it,
 - (d) no chargeable gains arise to it in that period,
 - (e) it does not incur any expenditure which would, if it were a company with investment business, be deductible for that period under section [] of [Bill 5] (expenses of management of a company with investment business), and
 - (f) no charges on income are deductible in calculating its total profits of that period.

Origin: Annex 1, Change {jc615}.

- (4) The redistribution condition is that –
- (a) the company pays dividends to one or more of its shareholders in the accounting period, and
 - (b) the total amount paid in the form of those dividends is at least equal to the amount of the income arising to the company in the form of dividends in that period.

Origin: Annex 1, Change {jc615}.

- (5) Nothing in this section affects the question whether a company that does not fall within subsection (1) is carrying on a business for the purposes of section 5(3).

Origin: Drafting.

7 Associated companies: fixed-rate preference shares [j2034aa]

- (1) In determining for the purposes of section 5(4) whether a company is under the control of another, fixed-rate preference shares held by a company are ignored if the company holding them –
- (a) is not a close company,
 - (b) takes no part in the management or conduct of the company which issued the shares, or in the management or conduct of its business, and
 - (c) subscribed for the shares in the ordinary course of a business which includes the provision of finance.

Origin: Annex 1, Change [jc616].

- (2) In this section “fixed-rate preference shares” means shares which –
- (a) were issued wholly for new consideration,
 - (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and
 - (c) do not carry any right to dividends other than dividends which –
 - (i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
 - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued.

Origin: Annex 1, Change [jc616].

- (3) In subsection (2)(a) “new consideration” has the meaning given by [section 254 of ICTA].

Origin: Annex 1, Change [jc616].

8 Association through a loan creditor [j2034ab]

- (1) A company (“A”) is not under the control of another company (“B”) for the purposes of section 5(4) if –
- (a) B is a loan creditor of A, but there is no other connection between A and B, and
 - (b) B is not a close company.

Origin: Annex 1, Change [jc616].

- (2) Subsection (3) applies if –
- (a) two companies (“A” and “B”) are controlled by the same company, which is a loan creditor of each of them,
 - (b) there is no other connection between A and B, and
 - (c) the loan creditor is not a close company.

Origin: Annex 1, Change [jc616].

- (3) In determining for the purposes of this Chapter whether A and B are associated with each other, rights which the loan creditor has as a loan creditor of A, or as a loan creditor of B, are ignored.

Origin: Annex 1, Change [jc616].

- (4) References in this section to a loan creditor of a company are to be read in accordance with [section 417(7) to (9) of ICTA].

Origin: Annex 1, Change [jc616].

- (5) For the purposes of this section there is a connection between two companies if—
- (a) they have, or have ever had, dealings with one another, or
 - (b) there is any other past or present connection between them.

Origin: Annex 1, Change [jc616].

- (6) In subsections (2) and (3) “control” has the meaning given by section 5(5) (read with subsection (1) above and sections 7 and 9).

Origin: Annex 1, Change [jc616].

9 Association through a trustee [j2034ac]

- (1) Subsection (2) applies if two companies (“A” and “B”) have no connection with each other apart from rights or powers (or both) held in trust by A.

Origin: Annex 1, Change [jc616].

- (2) In determining for the purposes of section 5(4) whether B is under the control of A, rights and powers held in trust by A are ignored.

Origin: Annex 1, Change [jc616].

- (3) Subsection (4) applies if—
- (a) two companies (“A” and “B”) are controlled by the same person by virtue of rights or powers (or both) held in trust by that person, and
 - (b) there is no other connection between A and B.

Origin: Annex 1, Change [jc616].

- (4) In determining for the purposes of this Chapter whether A and B are associated with each other, the rights and powers mentioned in subsection (3)(a) are ignored.

Origin: Annex 1, Change [jc616].

- (5) For the purposes of this section there is a connection between two companies if—
- (a) they have, or have ever had, dealings with one another, or
 - (b) there is any other past or present connection between them.

Origin: Annex 1, Change [jc616].

- (6) In subsections (3) and (4) “control” has the meaning given by section 5(5) (read with subsections (1) and (2) above and sections 7 and 8).

Origin: Annex 1, Change [jc616].

Interpretation

10 Meaning of “augmented profits” in this Chapter [j2035]

- (1) For the purposes of this Chapter, a company’s augmented profits of an accounting period are—
- (a) the company’s net profits of that period, plus
 - (b) any franked investment income received by the company that is not excluded by subsection (2).

Origin: ICTA s.13(7).

- (2) This subsection excludes any franked investment income which the company (“the receiving company”) receives from a UK resident company which is—
- (a) a 51% subsidiary of—
 - (i) the receiving company, or
 - (ii) a company of which the receiving company is a 51% subsidiary, or
 - (b) a trading company or relevant holding company that is a quasi-subsubsidiary of the receiving company.

Origin: ICTA s.13(7).

- (3) For the purposes of subsection (2)(b) a company is a quasi-subsubsidiary of the receiving company if—
- (a) it is owned by a consortium of which the receiving company is a member, and
 - (b) it is not a 75% subsidiary of any company, nor do arrangements of any kind (whether in writing or not) exist by virtue of which it could become a 75% subsidiary of any company.

Origin: ICTA s.13(7), (7A).

11 Interpretation of section 10(2) and (3) [j2036]

- (1) For the purposes of section 10(2)(a), a company (“A”) is treated as a 51% subsidiary of another company (“B”) only at times when—
- (a) B would be beneficially entitled to more than 50% of any profits available for distribution to equity holders of A, and
 - (b) B would be beneficially entitled to more than 50% of any assets of A available for distribution to its equity holders on a winding up.

Origin: ICTA s.13ZA(2).

- (2) The requirement in subsection (1) is in addition to the requirements of [section 838(1)(a) of ICTA] (meaning of “51% subsidiary”).

Origin: ICTA s.13ZA(2).

- (3) In determining for the purposes of section 10(2)(a) whether or not a company is a 51% subsidiary of another company (“C”), C is treated as not being the owner of share capital if—
- (a) it owns the share capital indirectly,
 - (b) the share capital is owned directly by a company (“D”), and
 - (c) a profit on the sale of the shares would be a trading receipt for D.

Origin: ICTA s.13ZA(1).

- (4) In section 10(2)(b) and this section—
- (a) “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades, and
 - (b) “relevant holding company” means a company whose business consists wholly or mainly of holding shares in or securities of trading companies that are its 90% subsidiaries.

Origin: ICTA s.13ZA(3).

- (5) For the purposes of section 10(3), a company is owned by a consortium if 75% or more of the company’s ordinary share capital is beneficially owned by two or more companies which—
- (a) each beneficially own at least 5% of that capital,
 - (b) would each be beneficially entitled to 5% or more of any profits available for distribution to equity holders of the company, and
 - (c) would each be beneficially entitled to 5% or more of any assets of the company available for distribution to its equity holders on a winding up.

Origin: ICTA s.13ZA(3).

- (6) The companies meeting those conditions are called the members of the consortium.

Origin: ICTA s.13ZA(3).

- (7) [Schedule 18 to ICTA] (equity holders and assets etc available for distribution) applies for the purposes of subsections (1) and (5) as it applies for the purposes of [section 413(7) of ICTA].

Origin: ICTA s.13ZA(4).

12 Close investment-holding companies [j2037]

- (1) A close company (“the candidate company”) is a close investment-holding company at the end of an accounting period unless it existed wholly or mainly for one or more of the permitted purposes throughout that period.

Origin: ICTA s.13A(1), (2).

- (2) The permitted purposes are—
- (a) carrying on a trade or trades on a commercial basis,
 - (b) making investments in—
 - (i) land, or
 - (ii) estates or interests in land,
 in cases where the land is, or is intended to be, let commercially (see subsection (3)),
 - (c) holding shares in and securities of, or making loans to, one or more companies each of which—
 - (i) is a qualifying company, or
 - (ii) falls within subsection (4),
 - (d) co-ordinating the administration of two or more qualifying companies,
 - (e) the making of investments as mentioned in paragraph (b)—
 - (i) by one or more qualifying companies, or

- (ii) by a company which has control of the candidate company, and
- (f) the carrying on of a trade or trades on a commercial basis—
 - (i) by one or more qualifying companies, or
 - (ii) by a company which has control of the candidate company.

Origin: ICTA s.13A(2).

- (3) For the purposes of subsection (2)(b), the letting of land is not commercial if the land is let to—
- (a) a person connected with the candidate company (“a connected person”), or
 - (b) a person who is—
 - (i) the spouse or civil partner of a connected person,
 - (ii) the relative of a connected person, or the spouse or civil partner of a relative of a connected person,
 - (iii) the relative of the spouse or civil partner of a connected person, or
 - (iv) the spouse or civil partner of a relative of the spouse or civil partner of the connected person,

but otherwise it is commercial.

Origin: ICTA s.13A(2).

- (4) A company falls within this subsection if—
- (a) it is under the control of the candidate company or of a company which has control of the candidate company, and
 - (b) it exists wholly or mainly for the purpose of holding shares in or securities of, or of making loans to, one or more qualifying companies.

Origin: ICTA s.13A(2).

- (5) In this section “qualifying company” means a company which—
- (a) is under the control of the candidate company or of a company which has control of the candidate company, and
 - (b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) and (b).

Origin: ICTA s.13A(3).

- (6) If—
- (a) a company is wound up, and
 - (b) it existed wholly or mainly for one or more of the permitted purposes throughout the accounting period that ends (by virtue of [section 12(7) of ICTA]) with the commencement of the winding up,
- it is treated, for the purposes of this section, as existing wholly or mainly for one or more of the permitted purposes throughout the subsequent accounting period.

Origin: ICTA s.13A(4).

- (7) In this section—
- “control” has the meaning given by [section 416(2) to (6) of ICTA], and
 - “relative” means brother, sister, ancestor or lineal descendant.

Origin: ICTA s.13A(5), s.839(8).