



Corporation Tax Act 2010

2010 CHAPTER 4

PART 5

GROUP RELIEF

CHAPTER 6

EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

Equity holders

158 Meaning of “equity holder”

- (1) An equity holder of a company (“the relevant company”) is any person who—
 - (a) holds ordinary shares in the company (see section 160), or
 - (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (see section 162).
- (2) For the purposes of subsection (1)(b) a person is a loan creditor of a company if the person is a creditor in respect of any redeemable loan capital issued by the company or in respect of a 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 (including any premium on the debt).
- (3) Subsection (1) is subject to section 159.

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Modifications etc. (not altering text)

- C1** Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), ss. 241\(6\), 381\(1\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- C2** Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), ss. 345\(7\), 381\(1\)](#) (with [Sch. 9 paras. 1-9, 22, 31](#))
- C3** Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 252(10) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4, s. 1184\(1\), Sch. 1 para. 252](#) (with [Sch. 2](#)))
- C4** Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), s. 170(8) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4, s. 1184\(1\), Sch. 1 para. 242\(4\)](#) (with [Sch. 2](#)))
- C5** Pt. 5 Ch. 6 applied (with modifications) by Finance Act 2009 (c. 4), s. 772(1)(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4, s. 1184\(1\), Sch. 1 para. 646](#) (with [Sch. 2](#)))
- C6** Pt. 5 Ch. 6 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), Sch. 7AC para. 8(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4, s. 1184\(1\), Sch. 1 para. 269\(3\)](#) (with [Sch. 2](#)))

159 Use of relevant company's assets

- (1) Subsection (2) applies if—
 - (a) a person (“P”) has, directly or indirectly, provided new consideration for any shares or securities in the relevant company,
 - (b) assets of the relevant company are used by P for the purposes of a trade carried on by P or are used by a person connected with P for the purposes of a trade carried on by that connected person, and
 - (c) in respect of those assets an allowance within subsection (3) has been made to the relevant company.
- (2) P (and no other person) is to be treated as being an equity holder in relation to the shares or securities mentioned in subsection (1)(a).
- (3) The allowances within this subsection are—
 - (a) an annual investment allowance, within the meaning of Chapter 5 of Part 2 of CAA 2001, in relation to expenditure incurred by the relevant company on the provision of plant or machinery,
 - (b) a first-year allowance, within the meaning of that Chapter, in relation to expenditure so incurred,
 - (c) a writing-down allowance, within the meaning of that Chapter, in relation to expenditure so incurred, and
 - (d) an allowance under Chapter 3 of Part 6 of CAA 2001 in relation to expenditure incurred by the relevant company on research and development (within the meaning of that Part).
- (4) If—
 - (a) P is a bank,
 - (b) the only new consideration provided by P is provided in the normal course of banking business by way of a normal commercial loan (see section 162), and
 - (c) the cost to the relevant company of the assets mentioned in subsection (1)(b) is less than the amount of the new consideration,

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the reference in subsection (2) to the shares or securities is to be read as a reference to only so much of that normal commercial loan as is equal to that cost of those assets.

160 Meaning of “ordinary shares”

- (1) For the purposes of section 158(1)(a) “ordinary shares” means shares other than restricted preference shares.
- (2) For the purposes of subsection (1) restricted preference shares are shares that meet each of conditions A to E.
- (3) Condition A is that the shares are issued for consideration which is or includes new consideration.
- (4) Condition B is that the shares do not carry any right to conversion into shares or securities other than a right to conversion into—
 - (a) shares to which section 164(1) applies,
 - (b) securities to which section 164(2) applies, or
 - (c) shares or securities in the relevant company's quoted parent company (see section 164(3) to (7)).
- (5) Condition C is that the shares do not carry any right to the acquisition of shares or securities.
- (6) Condition D is that the shares—
 - (a) do not carry a right to dividends, or
 - (b) carry a restricted right to dividends (see section 161).
- (7) Condition E is that the shares, on repayment, do not carry rights to an amount exceeding the new consideration mentioned in subsection (3) except so far as those rights are reasonably comparable with those generally carried by fixed dividend shares listed on a recognised stock exchange.

Modifications etc. (not altering text)

C7 S. 160 modified by 1988 c. 1, Sch. 25 para. 2(7A) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 147\(2\)\(b\)](#) (with [Sch. 2](#)))

161 Meaning of “restricted right to dividends”

- (1) For the purposes of condition D in section 160, a right to dividends carried by shares in a company is a “restricted right to dividends” if—
 - (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the shares, and
 - (b) subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
 - (a) the dividends are of a fixed amount or are at a fixed percentage rate of the nominal value of the shares, and
 - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.

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- (3) This subsection applies if—
- (a) the dividends are of a fluctuating percentage rate of the nominal value of the shares, and
 - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
- (4) This subsection applies if paragraph (a) of subsection (2) or (3) is met but paragraph (b) of that subsection is not met and—
- (a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in special circumstances, or
 - (b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in special circumstances.
- (5) For the purposes of subsection (3)(a) dividends are of a “fluctuating percentage rate” of the nominal value of shares if the rate fluctuates in accordance with—
- (a) a standard published rate of interest,
 - (b) the retail prices index, or
 - (c) any other general index of prices similar to the retail prices index that is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated.
- (6) For the purposes of subsection (4) a company reduces the amount of, or does not pay, dividends “in special circumstances” if—
- (a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or
 - (b) the company does so for the purpose of following a recommendation of a relevant regulatory body.
- (7) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of subsection (6)(a).
- (8) In subsection (6)(b) “relevant regulatory body” means—
- (a) in relation to a dividend paid by a company that is authorised for the purposes of the FISMA 2000, the Financial Services Authority, and
 - (b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

162 Meaning of “normal commercial loan”

- (1) For the purposes of sections 158(1)(b) and 159(4)(b) “normal commercial loan” means a loan—
- (a) which is of or includes new consideration, and
 - (b) in relation to which each of conditions A to D is met.
- (2) Condition A is that the loan does not carry any right to conversion into shares or securities other than a right to conversion into—
- (a) shares to which section 164(1) applies,

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- (b) securities to which section 164(2) applies, or
 - (c) shares or securities in [^{F1}a quoted unconnected company (see section 164(2A)) or in] the relevant company's quoted parent company (see section 164(3) to (7)).
- (3) Condition B is that the loan does not carry any right to the acquisition of shares or securities.
- (4) Condition C is that the loan does not entitle the loan creditor to any amount by way of interest which—
- (a) depends to any extent on the results of the relevant company's business or on the results of any part of that business,
 - (b) depends to any extent on the value of any of the relevant company's assets, or
 - (c) exceeds a reasonable commercial return on the new consideration lent.
- This subsection needs to be read with section 163.
- (5) Condition D is that the loan is a loan in relation to which the loan creditor is entitled, on repayment, to an amount which—
- (a) does not exceed the new consideration lent, or
 - (b) is reasonably comparable with the amount generally repayable (in relation to an equal amount of new consideration) under the terms of issue of securities listed on a recognised stock exchange.

Textual Amendments

- F1** Words in s. 162(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2012 (c. 14), s. 32(2)

163 Normal commercial loans: company's results or value of assets

- (1) Interest is not within section 162(4)(a) by reason only that the terms of the loan provide for the rate of interest—
- (a) to be reduced if the results of the relevant company's business or any part of the business improve, or
 - (b) to be increased if such results worsen.
- (2) Interest is not within section 162(4)(b) by reason only that the terms of the loan provide for the rate of interest—
- (a) to be reduced if the value of any of the relevant company's assets increases, or
 - (b) to be increased if the value of any such assets decreases.
- (3) Subsection (4) applies if—
- (a) a loan is made to the relevant company for the purpose of facilitating the acquisition of land,
 - (b) the loan is made on the basis mentioned in subsection (5), and
 - (c) none of the land that the loan is used to acquire is acquired with a view to resale at a profit.
- (4) Interest on the loan is not within section 162(4)(b) by reason only that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount

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due is by exercising rights granted by way of security over the land that the loan is used to acquire.

- (5) The basis referred to in subsection (3)(b) is that—
- (a) the whole of the loan is to be applied in the acquisition of land by the relevant company or in meeting incidental costs incurred wholly and exclusively for the purpose of obtaining the loan or providing security for the loan,
 - (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land that the loan is used to acquire, and
 - (c) no other security is to be required for the payment of any such amount.
- (6) “Incidental costs” means expenditure on fees, commissions, advertising, printing or other incidental matters.

164 Sections 160 and 162: supplementary

- (1) This subsection applies to any shares—
- (a) in relation to which conditions A, C, D and E in section 160 are met, and
 - (b) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company's quoted parent company (see subsections (3) to (6)).
- (2) This subsection applies to any securities—
- (a) which represent a loan of or including new consideration,
 - (b) in relation to which conditions B, C and D in section 162 are met, and
 - (c) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in [^{F2}a quoted unconnected company (see subsection (2A)) or in] the relevant company's quoted parent company.

[^{F3}(2A) For the purposes of this section and section 162 a company is a quoted unconnected company if (and only if)—

- (a) its ordinary shares are listed on a recognised stock exchange, and
- (b) it is not connected with the relevant company.]

- (3) For the purposes of this section and sections 160 and 162 a company (“the candidate company”) is the relevant company's quoted parent company if (and only if)—
- (a) the relevant company is a 75% subsidiary of the candidate company,
 - (b) the candidate company is not a 75% subsidiary of any company, and
 - (c) the candidate company's ordinary shares are listed on a recognised stock exchange.

- (4) [^{F4}In the case of a company whose] ordinary share capital is divided into two or more classes, [^{F5}subsections (2A)(a) and (3)(c) are] met only if its ordinary shares of each class are listed on a recognised stock exchange.

- (5) In [^{F6}this section] “ordinary shares” means shares forming part of ordinary share capital.

- (6) Subsection (7) applies if, in determining under subsection (3)(a) whether the relevant company is a 75% subsidiary of the candidate company, it is necessary to know, for the purposes of subsection (1)(b) or (2)(c) or section 160(4)(c) or 162(2)(c), whether the candidate company is the relevant company's quoted parent company.

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- (7) It is to be assumed for those purposes that the candidate company is the relevant company's quoted parent company.

Textual Amendments

- F2** Words in s. 164(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(3\)](#)
- F3** S. 164(2A) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(4\)](#)
- F4** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(a\)](#)
- F5** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(b\)](#)
- F6** Words in s. 164(5) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(6\)](#)

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