



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XI

#### COMPANY TAXATION

#### CHAPTER III

##### CLOSE COMPANIES

##### *General definitions*

### **302 Meaning of " associated company " and " control "**

- (1) For the purposes of this Chapter, other than section 290 above, a company is to be treated as another's " associated company " at a given time if, at that time or at any time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.
- (2) For the purposes of this Chapter, a person shall be taken to have control of a company—
  - (a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company, or
  - (b) if he possesses, or is entitled to acquire, either—
    - (i) the greater part of the issued share capital of the company, or
    - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed, or

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- (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members, or
  - (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.
- (3) Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (2) above, they shall be taken to have control of the company.
- (4) In subsection (2) above " member " includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire ; and, for the purposes of paragraphs (b) (iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).
- (5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.
- (6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection ; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

### **303 Meaning of "participator", "associate", "director" and "loan creditor"**

- (1) For the purposes of this Chapter, a " participator " is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
  - (b) any loan creditor of the company,
  - (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing " distributions " without regard to section 284 or section 285 of this Act) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption, and
  - (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

- (2) The provisions of subsection (1) above are without prejudice to any particular provision of this Chapter requiring a participator in one company to be treated as being also a participator in another company.
- (3) For the purposes of this Chapter " associate " means, in relation to a participator—

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- (a) any relative or partner of the participator,
- (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor ("settlement" and "settlor" having here the same meaning as in section 454(3) of this Act), and
- (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein, and has a corresponding meaning in relation to a person other than a participator:

Provided that paragraph (c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

- (i) if the trust relates exclusively to a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or to a scheme the whole of which is an "excepted provident fund or staff assurance scheme or other similar scheme" as defined in section 224 of this Act, or
- (ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (ii) of this proviso, any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

- (4) In subsection (3) above "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (5) For the purposes of this Chapter "director" includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—
  - (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
  - (b) is remunerated out of the funds of that trade or business, and
  - (c) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.
- (6) In subsection (5)(c) above, the expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own, and in paragraph (ii) of the proviso to subsection (3) above the expression "either on his own or with his relatives" has a corresponding meaning.
- (7) For the purposes of this Chapter "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—
  - (a) for any money borrowed or capital assets acquired by the company, or
  - (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 thereon),

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or in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.