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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART VI U.K.

#### COMPANY DISTRIBUTIONS, TAX CREDITS ETC

### CHAPTER II U.K.

#### MATTERS WHICH ARE DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

##### Modifications etc. (not altering text)

- C1 Pt. 6 Ch. 2 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), Sch. 24 para. 14(5)
- C2 Pt. 6 Ch. 2 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 13(5) (with s. 40(7), Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C3 Pt. 6 Ch. 2 modified (8.11.1995) by Gas Act 1995 (c. 45), s. 18(2)(c), Sch. 5 paras. 1, 10(4)

#### 209 Meaning of “distribution”. U.K.

- (1)<sup>M1</sup>The following provisions of this Chapter, together with section 418, shall, subject to section 339(6) and to any other express exceptions, have effect with respect to the meaning of “distribution” and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.
- (2) In the Corporation Tax Acts “distribution”, in relation to any company, means—
  - (a)<sup>M2</sup>any dividend paid by the company, including a capital dividend;
  - (b) subject to subsections (5) and (6) below, any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents repayment

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of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

- (c) subject to section 230, any redeemable share capital or any security issued by the company in respect of shares in or securities of the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration;
- (d) <sup>M3</sup>any interest or other distribution out of assets of the company in respect of securities of the company, where they are securities under which the consideration given by the company for the use of the principal thereby secured represents more than a reasonable commercial return for the use of that principal, except so much, if any, of any such distribution as represents that principal and so much as represents a reasonable commercial return for the use of that principal;
- (e) <sup>M4</sup>any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured and except so much of any distribution as falls within paragraph (d) above), where the securities are—
  - (i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 in respect of shares and securities issued before 6th April 1972 in respect of securities; or
  - (ii) securities convertible directly or indirectly into shares in the company or securities issued after 5th April 1972 and carrying any right to receive shares in or securities of the company, not being (in either case) securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted; or
  - (iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it; or
  - (iv) securities issued by the company (“the issuing company”) and held by a company not resident in the United Kingdom where the issuing company is a 75 per cent. subsidiary of the other company or both are 75 per cent. subsidiaries of a third company which is not resident in the United Kingdom; or
  - (v) securities issued by the company (“the issuing company”) and held by a company not resident in the United Kingdom (“the non-resident company”) where less than 90 per cent. of the share capital of the issuing company is directly owned by a company resident in the United Kingdom and both the issuing company and the non-resident company are 75 per cent. subsidiaries of a third company which is resident in the United Kingdom; or
  - (vi) securities which are connected with shares in the company, and for this purpose securities are so connected if, in consequence of the nature of the rights attaching to the securities or shares and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares [<sup>F1</sup>or;

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- (vii) equity notes issued by the company (“the issuing company”) and held by a company which is associated with the issuing company or is a funded company;]
- (f) any such amount as is required to be treated as a distribution by subsection (4) below or section 210.
- (3) <sup>M5</sup>Without prejudice to section 254(11), no amount shall be regarded for the purposes of subsection (2)(d) and (e) above as representing the principal secured by a security issued after 5th April 1972 in so far as it exceeds any new consideration which has been received by the company for the issue of the security.
- (4) <sup>M6</sup>Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall, subject to subsections (5) and (6) below, be treated as making a distribution to him of an amount equal to the difference.
- (5) Subsection (4) above shall not apply where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident; and any amount which would apart from this subsection be a distribution shall not constitute a distribution by virtue of subsection (2)(b) above.
- (6) <sup>M7</sup>No transfer of assets (other than cash) or of liabilities between one company and another shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (4) above if they are companies—
- (a) both of which are resident in the United Kingdom and neither of which is a 51 per cent. subsidiary of a company not so resident; and
  - (b) which, neither at the time of the transfer nor as a result of it, are under common control.
- For the purposes of this subsection two companies are under common control if they are under the control of the same person or persons, and for this purpose “control” shall be construed in accordance with section 416.
- (7) <sup>M8</sup>The question whether one body corporate is a subsidiary of another for the purpose of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate, if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (8) <sup>M9</sup>For the purposes of subsection (2)(c) above—
- (a) the value of any redeemable share capital shall be taken to be the amount of the share capital together with any premium payable on redemption, or in a winding up, or in any other circumstances; and
  - (b) the value of any security shall be taken to be the amount of the principal thereby secured (including any premium payable at maturity or in a winding up, or in any other circumstances);

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and in determining the amount of the distribution constituted by the issue of any redeemable share capital or any security, the capital or security shall be taken at that value.

[<sup>F2</sup>(9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—

- (a) the security's terms contain no particular date by which it is to be redeemed,
- (b) under the security's terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,
- (c) under the security's terms redemption is to occur after the expiry of the permitted period if a particular event occurs and the event is one which (judged at the time of the security's issue) is certain or likely to occur, or
- (d) the issuing company can secure that there is no particular date by which the security is to be redeemed or that the date for redemption falls after the expiry of the permitted period;

and the permitted period is the period of 50 years beginning with the date of the security's issue.

(10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—

- (a) the issuing company is a 75 per cent. subsidiary of the other company,
- (b) the other company is a 75 per cent. subsidiary of the issuing company, or
- (c) both are 75 per cent. subsidiaries of a third company.

(11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.]

#### Textual Amendments

- F1** S. 209(2)(e)(vii) and word "or" immediately preceding inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 31\(1\)\(4\)](#).
- F2** S. 209(9)-(11) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 31\(2\)\(4\)](#).

#### Marginal Citations

- M1** Source—1970 s.233(1); 1980 s.45(2)
- M2** Source—1970 s.233(2)(a), (b), (c); 1972 Sch.22 1, 2(1)
- M3** Source—1970 s.233(2)(d)(iii); 1972 Sch.22 3(2)
- M4** Source—1970 s.233(d), (e); 1970(F) Sch.4 6; 1972 Sch.22 3(1)
- M5** Source—1972 Sch.22 3(3)
- M6** Source—1970 s.233(3); 1972 Sch.22 4(3)
- M7** Source—1972 Sch.22 4(1), (2)
- M8** Source—1970 s.233(4)
- M9** Source—1972 Sch.22 2(2)

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VALID FROM 24/07/2002

**[<sup>F3</sup>209A Section 209(3AA): link to shares of company or associated company U.K.]**

- (1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the “issuing company”) if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—
  - (a) the issuing company; or
  - (b) an associated company of the issuing company;but this subsection is subject to the following provisions of this section.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—
  - (a) the issuing company is a bank or securities house;
  - (b) the security is issued by the issuing company in the ordinary course of its business; and
  - (c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.
- (3) In subsection (2)(c) above “qualifying index” means an index whose underlying subject matter includes both—
  - (a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and
  - (b) shares in one or more companies falling within neither of those paragraphs, and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.
- (4) In this section—

“bank” has the meaning given by section 840A;

“securities house” means any person—

  - (a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and
  - (b) whose business consists wholly or mainly of dealing in financial instruments as principal;

and in paragraph (b) above “financial instrument” has the meaning given by section 349(5) and (6).
- (5) For the purposes of this section a company is an “associated company” of another at any time if at that time one has control of the other or both are under the control of the same person or persons.
- (6) For the purposes of subsection (5) above, “control”, in relation to a company, means the power of a person to secure—
  - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

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- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company, that the affairs of the company are conducted in accordance with his wishes.
- (7) There shall be left out of account for the purposes of subsection (6) above—
- (a) any shares held by a company, and
  - (b) any voting power or other powers arising from shares held by a company, if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company's long-term insurance fund (see section 431(2)).]

### Textual Amendments

- F3** Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), s. 102(2)

VALID FROM 24/07/2002

### [<sup>F3</sup>209B Section 209(3AA): hedging arrangements U.K.]

- (1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the “issuing company”) if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—
  - (a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and
  - (b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.
- (3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.
- (4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax or stamp duty.
- (5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it, any amounts intended under the hedging arrangements to offset some or all of that deduction arise—
  - (a) to the issuing company; or

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- (b) to a company which is a member of the same group of companies as the issuing company.
- (6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—
- (a) by a company falling within paragraph (a) or (b) of that subsection, or
- (b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.
- (7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.
- (8) For the purposes of this section “hedging arrangements”, in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.
- (9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).]

#### Textual Amendments

- F3** Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), s. 102(2)

## 210 Bonus issue following repayment of share capital. **U.K.**

- <sup>M10</sup>(1) Where a company—
- (a) repays any share capital or has done so at any time after 6th April 1965, and
- (b) at or after the time of that repayment issues any share capital as paid up otherwise than by the receipt of new consideration,
- the amount so paid up shall, except as provided by any provision of the Corporation Tax Acts, be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.
- (2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—
- (a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or
- (b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout

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the period from their issue until the repayment those shares continued to be fully paid preference shares.

- (3) <sup>M11</sup> Except in relation to a company within paragraph D of section 704, subsection (1) above shall not apply if the issue of share capital mentioned in paragraph (b) of that subsection—
- (a) is of share capital other than redeemable share capital; and
  - (b) takes place after 5th April 1973 and more than ten years after the repayment of share capital mentioned in paragraph (a) of that subsection.
- (4) <sup>M12</sup> In this section—
- “ordinary shares” means shares other than preference shares;
- “preference shares” means shares—
- (a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, and
  - (b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on the Stock Exchange; and
- “new consideration not derived from ordinary shares” means new consideration other than consideration—
- (a) consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, or
  - (b) derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

#### **Marginal Citations**

- M10** Source—1970 s.234(1), (2)  
**M11** Source—1972 Sch.22 5(2), (3)  
**M12** Source—1970 s.234(3); 1973 s.54

## **211 Matters to be treated or not to be treated as repayments of share capital. U.K.**

- (1) <sup>M13</sup> Where—
- (a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965; and
  - (b) any amount so paid up does not fall to be treated as a qualifying distribution or, where the issue took place before 6th April 1973, did not fall to be treated as a distribution;

then, except as otherwise provided by any provision of the Corporation Tax Acts, for the purposes of sections 209 and 210, distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after 6th April 1965 and not falling to be treated as qualifying distributions or, where the share capital was issued before 6th April 1973, as distributions.



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- (2) <sup>M14</sup> Except in relation to a company within paragraph D of section 704, subsection (1) above shall not prevent a distribution being treated as a repayment of share capital if it is made—
- (a) more than ten years after the issue of share capital mentioned in paragraph (a) of that subsection; and
  - (b) in respect of share capital other than redeemable share capital.
- (3) <sup>M15</sup> In subsection (1) above “relevant distribution” means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.
- (4) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.
- (5) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Chapter whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital.
- (6) Subsection (5) above shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.
- (7) Subject to subsection (5) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

#### Marginal Citations

**M13** Source—1970 s.235(1); 1972 Sch.22 6(1), (3)

**M14** Source—1972 Sch.22 6(2)

**M15** Source—1970 s.235 (2)-(5)

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