



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

CHAPTER III

MATTERS WHICH ARE NOT DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

Payments of interest

212 Interest etc. paid in respect of certain securities.

^{M1}(1) Any interest or other distribution—

- (a) which is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax; and
- (b) which is so paid in respect of securities of the borrower which fall within [^{F1}paragraph (da) of section 209(2) or] any of sub-paragraphs (i) to (iii) and (vi) [^{F2}and (vii)] of paragraph (e) of section 209(2); and
- (c) which does not fall within paragraph (d) of section 209(2),

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by subsection (2) or (3) below.

(2) Subsection (1) above does not apply in the case of any interest or other distribution which is paid in respect of a security of the borrower falling within section 209(2)(e) (iii) if—

- (a) the principal secured does not exceed £100,000; and
- (b) the borrower is under an obligation to repay the principal and interest before the expiry of the period of five years beginning on the date on which the principal was paid to the borrower; and

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- (c) that obligation either was entered into before 9th March 1982 or was entered into before 1st July 1982 pursuant to negotiations which were in progress on 9th March 1982; and
- (d) where the period for repayment of either principal or interest is extended after 8th March 1982 (but paragraph (b) above still applies), the interest or other distribution is paid within the period which was applicable immediately before that date;

and for the purposes of paragraph (c) above negotiations shall not be regarded as having been in progress on 9th March 1982 unless, before that date, the borrower had applied to the lender for a loan and had supplied the lender with any documents required by him to support the application.

- (3) [^{F3}Without prejudice to subsection (4) below,] subsection (1) above does not apply in a case where the company to which the interest or other distribution is paid is entitled under any enactment, other than section 208, to an exemption from tax in respect of that interest or distribution [^{F4}and does not apply in relation to any interest or distribution falling within section 209(2)(da) if that interest or distribution is otherwise outside the matters in respect of which that company is within the charge to corporation tax.]

- [^{F5}(4) Where any interest or other distribution is paid to a charity (within the meaning of section 506) or to any of the bodies mentioned in section 507, the interest or distribution so paid shall not be a distribution for the purposes of the Corporation Tax Acts if it would otherwise fall to be treated as such a distribution by virtue only of paragraph (da) of section 209(2).]

Textual Amendments

- F1** Words in s. 212(1)(b) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(a)
- F2** Words in s. 212(1)(b) 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(3)(4).
- F3** Words in s. 212(3) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(b)(i)
- F4** Words in s. 212(3) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(b)(ii)
- F5** S. 212(4) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), s. 87(4)(c)

Marginal Citations

- M1** Source—1982 s.60(1)-(4)

Demergers

213 Exempt distributions.

- ^{M2}(1) The provisions of this section and sections 214 to 218 have effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by two or more companies not belonging to the same group or by two or more independent groups.

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(2) References in the Corporation Tax Acts to distributions of a company shall not apply to any distribution—

- (a) which falls within subsection (3) below, and
- (b) in respect of which the conditions specified in subsections (4) to (12) below are satisfied;

and any such distribution is referred to in this section as an “exempt distribution”.

(3) The following distributions fall within this subsection—

- (a) a distribution consisting of the transfer to all or any of its members by a company (“the distributing company”) of shares in one or more companies which are its 75 per cent. subsidiaries;
- (b) a distribution consisting of the transfer by a company (“the distributing company”) to one or more other companies (“the transferee company or companies”) of—
 - (i) a trade or trades; or
 - (ii) shares in one or more companies which are 75 per cent. subsidiaries of the distributing company,

and the issue of shares by the transferee company or companies to all or any of the members of the distributing company;

and in this section and sections 214 to 217 references to a relevant company are to the distributing company, to each subsidiary whose shares are transferred as mentioned in paragraph (a) or (b) (ii) above and to each transferee company mentioned in paragraph (b) above.

(4) Each relevant company must be resident in the United Kingdom at the time of the distribution.

(5) The distributing company must at the time of the distribution be either a trading company or a member of a trading group and each subsidiary whose shares are transferred as mentioned in subsection (3)(a) or (b)(ii) above must at that time be either a trading company or the holding company of a trading group.

(6) In a case within subsection [^{F6}(3)(a)] above—

- (a) the shares must not be redeemable, must constitute the whole or substantially the whole of the distributing company’s holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company’s voting rights in the subsidiary; and
- (b) subject to subsections (7) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

(7) Subsection (6)(b) above does not apply if the transfer relates to two or more 75 per cent. subsidiaries of the distributing company and that company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.

(8) In a case within subsection (3)(b) above—

- (a) if a trade is transferred the distributing company must either not retain any interest or retain only a minor interest in that trade;
- (b) if shares in a subsidiary are transferred those shares must constitute the whole or substantially the whole of the distributing company’s holding of the ordinary share capital of the subsidiary and must confer the whole or

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- substantially the whole of the distributing company's voting rights in the subsidiary;
- (c) the only or main activity of the transferee company or each transferee company after the distribution must be the carrying on of the trade or the holding of the shares transferred to it;
 - (d) the shares issued by the transferee company or each transferee company must not be redeemable, must constitute the whole or substantially the whole of its issued ordinary share capital and must confer the whole or substantially the whole of the voting rights in that company; and
 - (e) subject to subsections (9) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.
- (9) Subsection (8)(e) above does not apply if there are two or more transferee companies each of which has a trade or shares in a separate 75 per cent. subsidiary of the distributing company transferred to it and the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.
- (10) The distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which before the distribution are carried on by a single company or group and after the distribution will be carried on by two or more companies or groups.
- (11) The distribution must not form part of a scheme or arrangements the main purpose or one of the main purposes of which is—
- (a) the avoidance of tax (including stamp duty); or
 - (b) without prejudice to paragraph (a) above, the making of a chargeable payment, as defined by section 214, or what would be such a payment if any of the companies mentioned in that section were an unquoted company; or
 - (c) the acquisition by any person or persons other than members of the distributing company of control of that company, of any other relevant company or of any company which belongs to the same group as any such company; or
 - (d) the cessation of a trade or its sale after the distribution.
- In paragraph (c) above “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.
- (12) Where the distributing company is a 75 per cent. subsidiary of another company—
- (a) the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group;
 - (b) subsections (6)(b) and (8)(e) above shall not apply; and
 - (c) the distribution must be followed by one or more other distributions falling within subsection (3)(a) or (b)(ii) above which satisfy the conditions of this section and result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the distribution becoming members of—
 - (i) the transferee company or each transferee company to which a trade was transferred by the distributing company; or
 - (ii) the subsidiary or each subsidiary whose shares were transferred by the distributing company; or

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- (iii) a company (other than that holding company) of which the company or companies mentioned in sub-paragraph (i) or (ii) above are 75 per cent. subsidiaries.

Textual Amendments

F6 1990 s.89 and Sch.14 para.3 (correction of errors)—deemed always to have had effect. Previously “(3)(1)(a)”.

Marginal Citations

M2 Source—1980 s.117, Sch.18 1-8, 23

VALID FROM 29/11/2007

[^{F7}213A Exempt distributions: division of business

- (1) A reference in the Corporation Tax Acts to distributions of a company shall not apply to a distribution if—
- (a) it is a distribution consisting of—
 - (i) the transfer of part of a business by a company (“the distributing company”) to one or more other companies (“the transferee company or companies”), and
 - (ii) the issue of shares by the transferee company or companies to the members of the distributing company, and
 - (b) the requirements of either section 140A(1A) of the 1992 Act (division of UK business) or section 140C(1A) of that Act (division of non-UK business) are satisfied in relation to the distribution.
- (2) A distribution to which this section applies is an “exempt distribution” for the purposes of sections 214 to 217.
- (3) The expression “relevant company” in sections 214 to 217 includes the distributing company and the transferee company or companies.]

Textual Amendments

F7 S. 213A inserted (29.11.2007 with effect in accordance with reg. 3(1) of the amending S.I. (as retrospectively amended by S.I. 2008/1579, reg. 4(1)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), Sch. 1 para. 13

214 Chargeable payments connected with exempt distributions.

- (1) ^{M3}If within five years after the making of an exempt distribution there is a chargeable payment—
- (a) the amount or value of the payment shall be treated as income chargeable to tax under Case VI of Schedule D;
 - (b) unless the payment is a transfer of money’s worth, sections 349(1) and 350 shall apply to the payment as if it were an annual sum payable otherwise than out of profits or gains charged to income tax;

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- (c) the payment shall be regarded as a distribution for the purposes of sections 337(2), [F8 and 338(2)(a)]; and
- (d) the payment shall not (if it otherwise would) be treated as a repayment of capital for the purposes of section 210 or 211.
- (2) ^{M4}In this section “a chargeable payment” means any payment made otherwise than for bona fide commercial reasons or forming part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax (including stamp duty), being a payment which—
- (a) a company concerned in an exempt distribution makes directly or indirectly to a member of that company or of any other company concerned in that distribution; and
- (b) is made in connection with, or with any transaction affecting, the shares in that or any such company; and
- (c) is not a distribution or exempt distribution or made to another company which belongs to the same group as the company making the payment.
- (3) Where a company concerned in an exempt distribution is an unquoted company subsection (2)(a) above shall have effect as if any reference to the making of a payment by, or to a member of, a company concerned in the exempt distribution included a reference to the making of a payment by or to any other person in pursuance of a scheme or arrangements made with the unquoted company or, if the unquoted company is—
- (a) under the control of five or fewer persons; and
- (b) not under the control of (and only of) a company which is not itself under the control of five or fewer persons,
- with any of the persons mentioned in paragraph (a) above.
- (4) References in this section to a company concerned in an exempt distribution are to any relevant company and to any other company which was connected with any such company for the whole or any part of the period beginning with the exempt distribution and ending with the making of the payment which is in question under this section.
- (5) For the purposes of subsection (4) above and this subsection a company shall be deemed to have been connected in the period referred to in that subsection with each company to which a company connected with it was connected in that period.
- (6) References in this section to a payment include references to a transfer of money’s worth including the assumption of a liability.

Textual Amendments

- F8** 1989 s.107 and Sch.12 para.10—in relation to accounting periods beginning after 31 March 1989 subject to certain exceptions. Previously “382(2)(a) and 427(4) and paragraph 3 of Schedule 19”.

Marginal Citations

- M3** Source—1980 Sch.18 14
- M4** Source—1980 Sch.18 13

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215 Advance clearance by Board of distributions and payments.

- (1) ^{M5}A distribution shall be treated as an exempt distribution in any case in which, before the distribution is made, the Board have, on the application of the distributing company, notified that company that the Board are satisfied that it will be such a distribution.
- (2) A payment shall not be treated as a chargeable payment in any case in which, before the payment is made, the Board have, on the application of the person intending to make it, notified him that they are satisfied that it will be made for bona fide commercial reasons and will not form part of any scheme or arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax (including stamp duty).
- (3) A company which becomes or ceases to be connected with another company may make an application under subsection (2) above as respects any payments that may be made by it at any time after becoming or ceasing to be so connected (whether or not there is any present intention to make any payments); and where a notification is given by the Board on such an application no payment to which the notification relates shall be treated as a chargeable payment by reason only of the company being or having been connected with the other company.
- (4) References in subsections (2) and (3) above to a payment shall be construed as in section 214.
- (5) ^{M6}Any application under this section shall be in writing and shall contain particulars of the relevant transactions and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purposes of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (6) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of the notice being complied with.
- (7) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) or (2) above or do not notify their decision to the applicant within the time required by subsection (6) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (5) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of this section as if it were a notification by the Board.
- (8) If any particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) or (2) above shall be void.

Marginal Citations

M5 Source—1980 Sch.18 17

M6 Source—1980 Sch.18 18

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216 Returns.

- (1)^{M7} Where a company makes an exempt distribution it shall within 30 days after the distribution make a return to the inspector giving particulars of the distribution and of the circumstances by reason of which it is exempt.
- (2)^{M8} Where within five years after the making of an exempt distribution a person makes a chargeable payment which consists of a transfer of money's worth, he shall within 30 days after the transfer make a return to the inspector giving particulars—
 - (a) of the transaction effecting the transfer;
 - (b) of the name and address of the recipient or each recipient and the value of what is transferred to him or each of them; and
 - (c) if the transfer is accompanied by a chargeable payment consisting of a payment of money, of that payment.
- (3) Subject to subsection (4) below, where within five years after the making of an exempt distribution a person makes a payment or a transfer of money's worth which would be a chargeable payment but for the fact that it is made for bona fide commercial reasons and does not form part of any such scheme or arrangements as are mentioned in section 214(2), that person shall within 30 days after making the payment or transfer make a return to the inspector giving particulars—
 - (a) in the case of a transfer, of the transaction by which it is effected;
 - (b) of the name and address of the recipient or each recipient and the amount of the payment made, or the value of what is transferred, to him or each of them; and
 - (c) of the circumstances by reason of which the payment or transfer is not a chargeable payment.
- (4) Subsection (3) above does not apply where the payment or transfer is one in relation to which a notification under section 215(3) has effect.

Marginal Citations

- M7** Source—1980 Sch.18 19
M8 Source—1980 Sch.18 20

217 Information.

- (1)^{M9} Where a distribution falling within section 213(3) has been made and the inspector has reason to believe that it may form part of any such scheme or arrangements as are mentioned in section 213(11), he may by notice require any relevant company or any person controlling any such company to furnish him within such time, not being less than 30 days, as may be specified in the notice with—
 - (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangements exist or have existed;
 - (b) such other information as the inspector may reasonably require for the purposes of section 213(11) and the company or that person has or can reasonably obtain.
- (2)^{M10} If the inspector has reason to believe that a person has not delivered an account or made a return which he is required to deliver or make by virtue of section 214(1) (b) or 216(2) or (3) in respect of any payment or transfer, he may by notice require

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that person to furnish him within such time, not being less than 30 days, as may be specified in the notice with such information relating to the payment or transfer as he may reasonably require for the purposes of section 214.

- (3) If the inspector has reason to believe that a payment or transfer has been made within five years after the making of an exempt distribution and that the payment or transfer is a chargeable payment by reason of the existence of any such scheme or arrangements as are mentioned in section 214(3), he may by notice require the person making the payment or transfer or, if that person is a company, any person controlling it to furnish him within such time, not being less than 30 days, as may be specified in the notice with—
- (a) a declaration in writing stating whether or not, according to information which that person has, or can reasonably obtain, any such scheme or arrangements exist or have existed;
 - (b) such other information as the inspector may reasonably require for the purposes of section 214 and that person has or can reasonably obtain.
- (4) Any recipient of a chargeable payment and any person on whose behalf such a payment is received shall, if so required by the inspector, state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations

M9 Source—1980 Sch.18 21

M10 Source—1980 Sch.18 22

218 Interpretation of sections 213 to 217.

^{M11}(1) In sections 213 to 217—

“chargeable payment” has the meaning given by section 214(2);

“control” shall be construed in accordance with section 416(2) to (6);

“distributing company” has the meaning given by section 213(3);

“exempt distribution” has the meaning given by section 213(2);

“group”, except in section 213(11)(c), means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries;

“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

“member”, where the reference is to a member of a company, does not, except in section 214(2)(a), include a person who is a member otherwise than by virtue of holding shares forming part of the company’s ordinary share capital;

“relevant company” has the meaning given by section 213(3);

“shares” includes stock;

“trade”, except in subsection (3) below, does not include dealing in shares, securities, land, trades or commodity futures and “trading activities” shall be construed accordingly;

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

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“trading group” means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades; and
 “unquoted company” means a company which does not satisfy the condition that its shares or some class thereof (disregarding debenture or loan stock, preferred shares or preferred stock) are listed in the Official List of the Stock Exchange and are dealt in on the Stock Exchange regularly or from time to time, so however that this definition does not apply to a company under the control of (and only of) one or more companies to which this definition does not apply.

- (2) In determining for the purposes of section 213(3) to (9) whether a company whose shares are transferred by the distributing company is a 75 per cent. subsidiary of the distributing company there shall be disregarded any share capital of the first-mentioned company which is owned indirectly by the distributing company.
- (3) In determining for the purposes of sections 213 to 217 whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—
 - (a) 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) 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.
- (4) Section 839 applies for the purposes of sections 213 to 217.

Marginal Citations

M11 Source—1980 Sch.18 23

Purchase of own shares

219 Purchase by unquoted trading company of own shares.

- ^{M12}(1) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if the company is an unquoted trading company or the unquoted holding company of a trading group and either—
- (a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 75 per cent. subsidiaries, and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—
 - (i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or
 - (ii) the avoidance of tax; and
 the conditions specified in sections 220 to 224, so far as applicable, are satisfied in relation to the owner of the shares; or
 - (b) the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) is applied by the person to whom it is made in discharging a liability

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of his for inheritance tax charged on a death and is so applied within the period of two years after the death;

and in sections 220 to 224—

“the purchase” means the redemption, repayment or purchase referred to in subsection (1)(a) above; and

“the vendor” means the owner of the shares at the time it is made.

- (2) Where, apart from this subsection, a payment falls within subsection (1)(b) above, subsection (1) above shall not apply to the extent that the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of shares in the company or another unquoted company which is a trading company or the holding company of a trading group.

Marginal Citations

M12 Source—1982 s.53(1)-(3); 1986 s.100

220 Conditions as to residence and period of ownership.

- ^{M13}(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.
- (2) The residence and ordinary residence of trustees shall be determined for the purposes of this section as they are determined under section [F⁹69 of the 1992 Act] for the purposes of that Act.
- (3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this section to be the same as the residence and ordinary residence of the deceased immediately before his death.
- (4) The references in this section to a person’s ordinary residence shall be disregarded in the case of a company.
- (5) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.
- (6) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse living with him then, unless that person is alive at the date of the purchase but is no longer the vendor’s spouse living with him, any period during which the shares were owned by that person shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor.
- (7) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner or is the personal representative of a previous owner—
- any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor, and
 - that subsection shall have effect as if it referred to three years instead of five.
- (8) In determining whether the condition in subsection (5) above is satisfied in a case where the vendor acquired shares of the same class at different times—

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- (a) shares acquired earlier shall be taken into account before shares acquired later, and
- (b) any previous disposal by him of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.
- (9) If for the purposes of capital gains tax the time when shares were acquired would be determined under any provision of Chapter II of Part IV of the [F⁹1992] Act (reorganisation of share capital, conversion of securities, etc.) then, unless the shares were allotted for payment or were comprised in share capital to which section 249 applies, it shall be determined in the same way for the purposes of this section.

Textual Amendments

- F9** Words in s. 220(2)(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 14(14)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

- M13** Source—1982 Sch.9 1, 2

221 Reduction of vendor's interest as shareholder.

- (1) ^{M14}If immediately after the purchase the vendor owns shares in the company, then, subject to section 224, the vendor's interest as a shareholder must be substantially reduced.
- (2) ^{M15}If immediately after the purchase any associate of the vendor owns shares in the company then, subject to section 224, the combined interests as shareholders of the vendor and his associates must be substantially reduced.
- (3) The question whether the combined interests as shareholders of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own.
- (4) ^{M16}Subject to subsection (5) below, the vendor's interest as a shareholder shall be taken to be substantially reduced if and only if the total nominal value of the shares owned by him immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time, does not exceed 75 per cent. of the corresponding fraction immediately before the purchase.
- (5) The vendor's interest as a shareholder shall not be taken to be substantially reduced where—
- (a) he would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and
 - (b) that share, expressed as a fraction of the total of those profits, exceeds 75 per cent. of the corresponding fraction immediately before the purchase.
- (6) In determining for the purposes of subsection (5) above the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which he would be entitled for a year.

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(7)^{M17} In subsection (5) above “profits available for distribution”^{M18} has the same meaning as it has for the purposes of Part VIII of the Companies Act 1985, except that for the purposes of that subsection the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased—

- (a) in the case of every company, by £100, and
- (b) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in subsection (6) above, by a further amount equal to that required to make the distribution to which he is entitled in accordance with that subsection;

and where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.

(8)^{M19} References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

Marginal Citations

- M14** Source—1982 Sch.9 3(1)
M15 Source—1982 Sch.9 4
M16 Source—1982 Sch.9 3(2)-(4)
M17 Source—1982 Sch.9 3(5), (6)
M18 1985 c.6
M19 Source—1982 Sch.9 3(7)

222 Conditions applicable where purchasing company is member of group.

(1)^{M20} Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and—

- (a) immediately after the purchase the vendor owns shares in one or more other members of the group (whether or not he then owns shares in the company making the purchase), or
- (b) immediately after the purchase the vendor owns shares in the company making the purchase and immediately before the purchase he owned shares in one or more other members of the group,

the vendor’s interest as a shareholder in the group must be substantially reduced.

(2) In subsections (5) to (7) below “relevant company” means the company making the purchase and any other member of the group in which the vendor owns shares immediately before or immediately after the purchase, but subject to subsection (4) below.

(3)^{M21} Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and his associates must be substantially reduced.

(4)^{M22} The question whether the combined interests as shareholders in the group of the vendor and his associates are substantially reduced shall be determined in the same

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- way as is (under the following subsections) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own (and references in subsections (5) to (7) below to a relevant company shall be construed accordingly).
- (5)^{M23} The vendor's interest as a shareholder in the group shall be ascertained by—
 - (a) expressing the total nominal value of the shares owned by him in each relevant company as a fraction of the issued share capital of the company,
 - (b) adding together the fractions so obtained, and
 - (c) dividing the result by the number of relevant companies (including any in which he owns no shares).
 - (6) Subject to subsection (7) below, the vendor's interest as a shareholder in the group shall be taken to be substantially reduced if and only if it does not exceed 75 per cent. of the corresponding interest immediately before the purchase.
 - (7) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced if—
 - (a) he would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and
 - (b) that share, or the aggregate of those shares, expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—
 - (i) a relevant company, or
 - (ii) a 51 per cent. subsidiary of a relevant company,
 exceeds 75 per cent. of the corresponding fraction immediately before the purchase.
 - (8) Subsections (6) and (7) of section 221 shall apply for the purposes of subsection (7) above as they apply for the purposes of subsection (5) of that section.
 - (9)^{M24} Subject to the following subsections, in this section "group" means a company which has one or more 51 per cent. subsidiaries, but is not itself a 51 per cent. subsidiary of any other company, together with those subsidiaries.
 - (10)^{M25} Where the whole or a significant part of the business carried on by an unquoted company ("the successor company") was previously carried on by—
 - (a) the company making the purchase, or
 - (b) a company which is (apart from this subsection) a member of a group to which the company making the purchase belongs, the successor company and any company of which it is a 51 per cent. subsidiary shall be treated as being a member of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).
 - (11) Subsection (10) above shall not apply if the successor company first carried on the business there referred to more than three years before the time of the purchase.
 - (12) For the purposes of this section a company which has ceased to be a 51 per cent. subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

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Marginal Citations

- M20** Source—1982 Sch.9 5(1), (2)
M21 Source—1982 Sch.9 6(1), (2)
M22 Source—1982 Sch.9 6(3)
M23 Source—1982 Sch.9 5(3)-(6)
M24 Source—1982 Sch.9 5(7), 6(4)
M25 Source—1982 Sch.9 5(8)-(10)

223 Other conditions.

- (1) ^{M26}Subject to section 224, the vendor must not immediately after the purchase be connected with the company making the purchase or with any company which is a member of the same group as that company.

In this subsection “group” has the same meaning as it has for the purposes of section 222.

- (2) ^{M27}Subject to section 224, the purchase must not be part of a scheme or arrangement which is designed or likely to result in the vendor or any associate of his having interests in any company such that, if he had those interests immediately after the purchase, any of the conditions in sections 221 and 222 and subsection (1) above could not be satisfied.
- (3) A transaction occurring within one year after the purchase shall be deemed for the purposes of subsection (2) above to be part of a scheme or arrangement of which the purchase is also part.

Marginal Citations

- M26** Source—1982 Sch.9 7
M27 Source—1982 Sch.9 8

224 Relaxation of conditions in certain cases.

^{M28}Where—

- (a) any of the conditions in sections 221 to 223 which are applicable are not satisfied in relation to the vendor, but
- (b) he proposed or agreed to the purchase in order that the condition in section 221(2) or 222(3) could be satisfied in respect of the redemption, repayment or purchase of shares owned by a person of whom he is an associate,

then, to the extent that that result is produced by virtue of the purchase, section 219(1) (a) shall have effect as if the conditions in sections 221 to 223 were satisfied in relation to the vendor.

Marginal Citations

- M28** Source—1982 Sch.9 9

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225 Advance clearance of payments by Board.

- (1) ^{M29}A payment made by a company on the redemption, repayment or purchase of its own shares shall be deemed—
 - (a) to be one to which section 219 applies if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will apply; and
 - (b) to be one to which section 219 does not apply if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will not apply.
- (2) An application under this section shall be in writing and shall contain particulars of the relevant transactions; and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision.
- (3) If a notice under subsection (2) above is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (4) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.
- (5) If particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board, any resulting notification by the Board shall be void.

Marginal Citations

M29 Source—1982 Sch.9 10

226 Returns and information.

- (1) ^{M30}A company which treats a payment made by it as one to which section 219 applies shall within 60 days after making the payment make a return to the inspector giving particulars of the payment and of the circumstances by reason of which that section is regarded as applying to it.
- (2) Where a company treats a payment made by it as one to which section 219(1)(a) applies, any person connected with the company who knows of any such scheme or arrangement affecting the payment as is mentioned in section 223(2) shall, within 60 days after he first knows of both the payment and the scheme or arrangement, give a notice to the inspector containing particulars of the scheme or arrangement.
- (3) ^{M31}Where the inspector has reason to believe that a payment treated by the company making it as one to which section 219(1)(a) applies may form part of a scheme or arrangement of the kind referred to therein or in section 223(2), he may by notice require the company or any person who is connected with the company to furnish him within such time, not being less than 60 days, as may be specified in the notice with—
 - (a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and

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- (b) such other information as the inspector may reasonably require for the purposes of the provision in question and the company or that person has or can reasonably obtain.
- (4) The recipient of a payment treated by the company making it as one to which section 219 applies, and any person on whose behalf such a payment is received, shall if so required by the inspector state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations

M30 Source—1982 Sch.9 11

M31 Source—1982 Sch.9 12

227 Associated persons.

- ^{M32}(1) Any question whether a person is an associate of another in relation to a company shall be determined for the purposes of sections 219 to 226 and 228 in accordance with the following provisions of this section.
- (2) A husband and wife living together are associates of one another, a person under the age of 18 is an associate of his parents, and his parents are his associates.
- (3) A person connected with a company is an associate of the company and of any company controlled by it, and the company and any company controlled by it are his associates.
- (4) Where a person connected with one company has control of another company, the second company is an associate of the first.
- (5) Where shares in a company are held by trustees (other than bare trustees) then in relation to that company, but subject to subsection (8) below, the trustees are associates of—
- any person who directly or indirectly provided property to the trustees or has made a reciprocal arrangement for another to do so,
 - any person who is, by virtue of subsection (2) above, an associate of a person within paragraph (a) above, and
 - any person who is or may become beneficially entitled to a significant interest in the shares;
- and any such person is an associate of the trustees.
- (6) Where shares in a company are comprised in the estate of a deceased person, then in relation to that company the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and any such person is an associate of the personal representatives.
- (7) Where one person is accustomed to act on the directions of another in relation to the affairs of a company, then in relation to that company the two persons are associates of one another.
- (8) Subsection (5) above shall not apply to shares held on trusts which—

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- (a) relate exclusively to an exempt approved scheme as defined in Chapter I of Part XIV, or
- (b) are exclusively for the benefit of the employees, or the employees and directors, of the company referred to in that subsection or of companies in a group to which that company belongs, or their dependants (and are not wholly or mainly for the benefit of directors or their relatives);

and for the purposes of this subsection “group” means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.

- (9) For the purposes of subsections (5) and (6) above a person’s interest is significant if its value exceeds 5 per cent. of the value of all the property held on the trusts or, as the case may be, comprised in the estate concerned, excluding any property in which he is not and cannot become beneficially entitled to an interest.

Marginal Citations

M32 Source—1982 Sch.9 14

228 Connected persons.

- ^{M33}(1) Any question whether a person is connected with a company shall be determined for the purposes of sections 219 to 227 in accordance with the following provisions of this section.
- (2) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—
- (a) the issued ordinary share capital of the company, or
 - (b) the loan capital and issued share capital of the company, or
 - (c) the voting power in the company.
- (3) Where a person—
- (a) acquired or became entitled to acquire loan capital of a company in the ordinary course of a business carried on by him, being a business which includes the lending of money, and
 - (b) takes no part in the management or conduct of the company,
- his interest in that loan capital shall be disregarded for the purposes of subsection (2) above.
- (4) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company which would then be available for distribution to equity holders of the company; and for the purposes of this subsection—
- (a) the persons who are equity holders of the company, and
 - (b) the percentage of the assets of the company to which a person would be entitled,
- shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.

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- (5) A person is connected with a company if he has control of it.
- (6) References in this section to the loan capital of a company are references to 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).
- (7) For the purposes of this section 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.
- (8) For the purposes of this section a person shall be assumed to have the rights or powers of his associates as well as his own.

Marginal Citations

M33 Source—1982 Sch.9 15

229 Other interpretative provisions.

^{M34}(1) In sections 219 to 228—

“control” has the meaning given by section 840;

“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

“personal representatives” means persons responsible for administering the estate of a deceased person;

“quoted company” means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange;

“shares” includes stock;

“trade” does not include dealing in shares, securities, land or futures and “trading activities” shall be construed accordingly;

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

“trading group” means a group the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades, and for this purpose “group” means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

“unquoted company” means a company which is neither a quoted company nor a 51 per cent. subsidiary of a quoted company.

- (2) References in sections 219 to 228 to the owner of shares are references to the beneficial owner except where the shares are held on trusts (other than bare trusts) or are comprised in the estate of a deceased person, and in such a case are references to the trustees or, as the case may be, to the deceased’s personal representatives.
- (3) References in sections 219 to 228 to a payment made by a company include references to anything else that is, or would but for section 219 be, a distribution.

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Marginal Citations

M34 Source—1982 Sch.9 16

Stock dividends

230 Stock dividends: distributions.

^{M35}Any share capital to which section 249 applies and which is issued by a company^{either}^{F10} as mentioned in subsection (4), (5) or (6) of that section *or to a close company as mentioned in paragraph 12(1) of Schedule 19*^{F10} (read in either case^{F10} with subsection (3) of that section)—

- (a) shall, notwithstanding section 209(2)(c), not constitute a distribution within the meaning of section 209(2); and
- (b) for purposes of sections 210 and 211 shall not be treated as issued “as paid up otherwise than by the receipt of new consideration”.

Textual Amendments

F10 Words in s. 230 repealed (in relation to accounting periods beginning after 31.3.1989) by [Finance Act 1989 \(c. 26\)](#), s. 187, [Sch. 17 Part V](#)

Marginal Citations

M35 Source—1975 (No.2) Sch.8 6

VALID FROM 01/04/2009

[^{F11}Industrial and provident society dividends etc

Textual Amendments

F11 [S. 230A](#) and preceding cross-heading inserted (1.4.2009 with effect in accordance with [s. 1329\(1\)](#) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 100](#) (with [Sch. 2 Pts. 1, 2](#))

230A Dividend or bonus granted by industrial and provident society

- (1) This section applies if—
 - (a) a dividend or bonus is granted by a registered industrial and provident society, and
 - (b) section 132 (deduction for dividends etc granted by industrial and provident societies) of CTA 2009 allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.
- (2) The dividend, or the bonus, is not treated as a distribution for the purposes of the Corporation Tax Acts.]

Status:

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