



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XI

#### CLOSE COMPANIES

#### CHAPTER I

##### INTERPRETATIVE PROVISIONS

#### 414 Close companies.

- (1) <sup>M1</sup>For the purposes of the Tax Acts, a “close company” is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—
- (a) to a company not resident in the United Kingdom;
  - (b) to a registered industrial and provident society within the meaning of section 486(12) or to a building society;
  - (c) to a company controlled by or on behalf of the Crown, and not otherwise a close company; or
  - (d) to a company falling within section 415 or subsection (5) below.
- [<sup>F1</sup>(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—
- (a) such rights as would, in the event of the winding-up of the company (“the relevant company”) on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or
  - (b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.

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- (2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—
- (a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and
  - (b) any part of those assets which he would be entitled to receive if—
    - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound up on the basis set out in this subsection, and
    - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.
- (2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to “the relevant company” shall have effect as references to the company concerned.
- (2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—
- (a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and
  - (b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.
- (2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that sections.]
- (3) <sup>M2</sup>*In ascertaining under subsection (2) above whether any amount could be apportioned among five or fewer participators or among participators who are directors, account shall, in cases where an original apportionment and any sub-apportionment are involved, be taken only of persons among whom that amount could finally be apportioned as the result of the whole process of original apportionment and sub-apportionment and those persons shall be treated as participators or directors if they are participators or directors of any company in the case of which either an original apportionment or any sub-apportionment could be made<sup>F2</sup>.*
- (4) <sup>M3</sup>For the purposes of this section—
- (a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and
  - (b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.
- (5) <sup>M4</sup>A company is not to be treated as a close company—
- (a) if—

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- (i) it is controlled by a company which is not a close company, or by two or more companies none of which is a close company; and
  - (ii) it cannot be treated as a close company except by taking as one of the five or fewer participators requisite for its being so treated a company which is not a close company;
- (b) if it cannot be treated as a close company except by virtue of [<sup>F3</sup> paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs] to participators did not include loan creditors who are companies other than close companies.
- (6) References in subsection (5) above to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.
- (7) <sup>M5</sup>If shares in any company (“the first company”) are held on trust for an exempt approved scheme as defined in section 592, then, unless the scheme is established wholly or mainly for the benefit of persons who are, or are dependants of, directors or employees or past directors or employees of—
- (a) the first company; or
  - (b) an associated company of the first company; or
  - (c) a company which is under the control of any director or associate of a director of the first company or of two or more persons each of whom is such a director or associate; or
  - (d) a close company;
- the persons holding the shares shall, for the purposes of subsection (5) above, be deemed to be the beneficial owners of the shares and, in that capacity, to be a company which is not a close company.

#### Textual Amendments

- F1** 1989 s. 104(1) from 1 April 1989. Previously "(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is a close company if-(a) on the assumption that it is so, or (b) on the assumption that it and any other such company or companies are so, more than half of any any amount falling to be apportioned under section 423 in the case of the company (including any sum which has been apportioned to it, or could on either of those assumptions be apportioned to it, under that section) could be apportioned among five or fewer participators, or among participators who are directors."
- F2** Repealed by 1989 ss. 104(2) and 187 and Sch. 17 Part V from 1 April 1989
- F3** 1989 s.104(3) from 1 April 1989. Previously "paragraph (c) of section 416(2) and it would not be a close company if the reference in that paragraph".

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

- C1** S. 414 modified by [Finance Act 1996 \(c. 8\)](#), [Sch. 13 para. 9A\(4\)](#) (as inserted (with effect in accordance with s. 104(5) of the 2002 amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 104\(3\)](#))
- C2** S. 414 modified by [Finance Act 1996 \(c. 8\)](#), [Sch. 9 para. 2\(5\)](#) (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 22\(4\)](#))
- C3** S. 414 applied (with modifications) (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [ss. 453, 456\(7\)](#) (with [Sch. 2](#))
- C4** See 1979(C) s.155(1)—*definition applied for purposes of capital gains.*

#### Marginal Citations

- M1** Source—1970 s.282(1)

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- |           |                                     |
|-----------|-------------------------------------|
| <b>M2</b> | Source—1970 s.282(2); 1972 Sch.17 1 |
| <b>M3</b> | Source—1970 s.282(3)                |
| <b>M4</b> | 1970 s.282(4), (5); 1972 Sch.17 1   |
| <b>M5</b> | Source—1971 s.25(6)                 |

#### **415 Certain quoted companies not to be close companies.**

- (1) <sup>M6</sup>Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—
  - (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and
  - (b) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been quoted in the official list of a recognised stock exchange.
- (2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.
- (3) For the purposes of subsection (1) above shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
  - (a) fall within subsection (4) below, and
  - (b) are not within the exceptions in subsection (5) below,
 and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- (4) Shares shall fall within this subsection (as being beneficially held by the public)—
  - (a) <sup>M7</sup>if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
  - (b) <sup>M8</sup>if held on trust for an exempt approved scheme as defined in section 592, or
  - (c) <sup>M9</sup>if they are not comprised in a principal member's holding.
- (5) <sup>M10</sup>Shares shall not be deemed to be held by the public if they are held—
  - (a) by any director or associate of a director of the company, or
  - (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
  - (c) by any associated company of the company, or
  - (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.

- (6) For the purposes of this section—

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- (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
  - (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.
- (8) In this section “shares” include stock.

#### Marginal Citations

- M6** Source—1970 s.283(1)-(3)
- M7** Source—1970 s.283(4)(a)
- M8** Source—1970 s.283(4)(bb); 1970(F) Sch.5 Part III 12(3)
- M9** Source—1970 s.283(4)(c)
- M10** Source—1970 s.283(5)-(8)

#### 416 Meaning of “associated company” and “control”.

- (1) <sup>M11</sup>For the purposes of this Part, *except paragraphs 2 and 9(1)(a), (2)(a) and (3)(a) of Schedule 19* <sup>F4</sup>, a company is to be treated as another's “associated company” at a given time if, at that time or at any other 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) <sup>M12</sup>For the purposes of this Part, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control 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—
- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
  - (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
  - (c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.
- (3) Where two or more persons together satisfy any of the conditions of subsection (2) above, they shall be taken to have control of the company.
- (4) For the purposes of subsection (2) above 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.

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- (5) <sup>M13</sup>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.

#### Textual Amendments

- F4** Words repealed by 1989 s. 187 and Sch. 17 Part v in relation to accounting periods beginning after 31 March 1989

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

- C5** S. 416 applied (with modifications) by Finance Act 1991 (c. 31, SIF 63:1), s. 89(1), **Sch. 16 para. 10(9)**  
S. 416 applied (with modifications) by Finance Act 1981 (c. 35, SIF 63:2), s. 82A(11)(13) (in relation to payments received on or after 19.3.1991) (as inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 91, **Sch. 18 para. 4**)
- C6** S. 416 applied (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. 86(5), 288(1), 289, Sch. 5 paras. 2(8)(9), 8(8), **9(9)(10)** (with ss. 60, 101(1), 171, 201(3))  
S. 416 applied (1.10.1992) by S.I. 1992/1725 (N.I. 15), **art. 62(4)**; S.R. 1992/402, **art. 2(a)**
- C7** S. 416 applied (17.12.1996) by Housing Grants, Construction and Regeneration Act 1996 (c. 53), **ss. 54(2), 150(3)**; S.I. 1996/2842, **art. 3**
- C8** S. 416 applied (N.I.) (1.10.2003 for specified purposes and 1.12.2003 otherwise) by The Housing (Northern Ireland) Order 2003 (S.I. 2003/412), **arts. 1(3), 85(2)**; S.R. 2003/270, **art. 2(4), Sch. 3**
- C9** S. 416(2)-(6) applied (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. 184(1)(b), 289** (with ss. 60, 101(1), 171, 201(3))
- C10** S. 416(2)-(6) applied (29.4.1996) by Finance Act 1996 (c. 8), **s. 87(6)** (with Schs. 10, 11)
- C11** S. 416(2)-(6) applied (with effect in accordance with Sch. 9 para. 17(1) of the affecting Act) by Finance Act 1996 (c. 8) Sch. 9 para. 17(9)
- C12** S. 416(2)-(5) applied (1.3.1996) by Gas Act 1995 (c. 45), **ss. 12(7), 18(4)** (with Sch. 5 para. 1); S.I. 1996/218, **art. 3**
- C13** S. 416(2)-(5) applied (10.6.1996) by The Gas (Northern Ireland) Order 1996 (S.I. 1996/275), **arts. 1(2), 39(7)** (with art. 71); S.R. 1996/216, **art. 2** (with arts. 3, 4)
- C14** S. 416(2)-(5) applied (with modifications) by Gas Act 1986 (c. 44), **s. 19E(4)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 2 para. 1**)
- C15** S. 416(2)-(5) applied (with modifications) by Petroleum Act 1998 (c. 17), **s. 17E(7)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 4 para. 4**)
- C16** S. 416(2)-(6) applied (with modifications) (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 8(2)-(5)**
- C17** S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 20**; and s. 416(2)-(6) applied by that para. 20 as amended by Finance Act 2004 (c. 12), Sch. 20 paras. 4, **15**

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- C18** S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 15 para. 33\(5\)](#)
- C19** S. 416(2)-(6) applied by [Finance Act 1996 \(c. 8\)](#), [Sch.15 para. 11\(2D\)\(a\)](#) (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 25 para. 41\(2\)](#))
- C20** S. 416(2)-(6) applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 29 para. 59\(4\)](#)
- C21** S. 416(2)-(6) applied by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 5 para. 10\(3\)](#) (as substituted (with effect in accordance with s. 96(6) of the 2004 amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 96\(3\)](#))
- C22** S. 416(2)-(6) applied (with effect in accordance with s. 77 of the affecting Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 11 para. 4\(2\)](#); [S.I. 2006/3240](#), [art. 2](#)
- C23** S. 416(2)-(6) applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 784\(6\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### Marginal Citations

- M11** Source—1970 s.302(1); 1972 Sch.24 21
- M12** Source—1970 s.302(2)-(4); 1972 Sch.17 5
- M13** Source—1970 s.302(5), (6)

#### 417 Meaning of “participator”, “associate”, “director” and “loan creditor”.

- (1) <sup>M14</sup>For the purposes of this Part, 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—
- any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
  - any loan creditor of the company;
  - 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 418) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and
  - 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 Part requiring a participator in one company to be treated as being also a participator in another company.
- (3) <sup>M15</sup>“associate” means, in relation to a participator—
- any relative or partner of the participator;
  - 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 681(4)); and
  - 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—
    - the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and
    - if the participator is a company, any other company interested in those shares or obligations;

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and has a corresponding meaning in relation to a person other than a participator.

- (4)<sup>M16</sup>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 Part “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, 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)(b) 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.
- (7)<sup>M17</sup>Subject to subsection (9) below, for the purposes of this Part “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);
- or in respect of any redeemable loan capital issued by the company.
- (8)<sup>M18</sup>Subject to subsection (9) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (7) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.
- (9)<sup>M19</sup>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.

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

**C24** *Definition of*

“participator”, *excluding*

“loan creditor”, *applied for purposes of* 1979(C) s.149 (*capital gains tax relief on disposals to employee trusts*). *Definition of*

“participator”

*applied for purposes of—* 1988 s.168(11)—*directors etc.* 1988 s.187(3)—*share option and profit sharing schemes.* 1988 s.360A—*loan to buy interest in close company.* 1989 Sch.5—*employee share ownership trusts.*

**C25** In s. 417(1): definition of 'participator' applied by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 89, Sch. 16 paras. 4(10), 10(10), **11(11)**

and applied by [Finance Act 1981 \(c. 35, SIF 63:2\)](#), s. **82A(12)(13)** (in relation to payments received on or after 19.3.1991) (as inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 91, **Sch. 18 para. 4**)



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- C26** See s.360(4)(b) *ante* with regard to loans made before 14 November 1986.
- C27** Definition of “associate”  
*applied for purposes of:*—1988 s.168 (Ch.II Part V) (*expenses of directors and others*).1988 s.312 (Ch.III Part VII) (*Business Expansion Scheme*).1989 Sch.5 para.16—*employee share ownership trusts*.
- C28** Definition applied for purposes of 1988(F) s.131—*penalties*; and 1989 s.134—*non-payment of tax by non-residents*.
- C29** Definition applied for purposes of 1989 Sch.12 Pt.I—*close companies: administrative provisions*.

#### Marginal Citations

- M14** Source—1970 s.303(1), (2)
- M15** Source—1970 s.303(3); 1970(F) Sch.5 Part III 12(4); 1987 s.37(1)
- M16** Source—1970 s.303(4)-(6)
- M17** Source—1970 s.303(7)
- M18** Source—1970 s.303(8); 1972 Sch.17 7
- M19** Source—1970 s.303(7)

#### *Additional matters to be treated as distributions*

#### **418 “Distribution” to include certain expenses of close companies.**

- (1) <sup>M20</sup>Subject to such exceptions as are mentioned in section 209(1), in the Corporation Tax Acts “distribution”, in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by subsection (2) below.
- (2) <sup>M21</sup>Subject to subsection (3) below, where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator.
- (3) Subsection (2) above shall not apply to expense incurred in or in connection with the provision—
- (a) <sup>M22</sup>for a person employed in [<sup>F5</sup>employment to which Chapter II of Part V applies] of such benefits as are mentioned in any of sections 154 to 165; or
- (b) <sup>M23</sup>of living accommodation for any person if the accommodation is (within the meaning of section 145) provided by reason of his employment; or
- (c) <sup>M24</sup>for the spouse, children or dependants of a person employed by the company of any pension, annuity, lump sum, gratuity or other like benefit to be given on that person’s death or retirement.
- (4) <sup>M25</sup>The amount of the expense to be taken into account under subsection (2) above as a distribution shall be the same as would under Chapter II of Part V be the cash equivalent of the resultant benefit to the participator.
- (5) <sup>M26</sup>Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
- (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and

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- (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.
- (6) The question whether one body corporate is a subsidiary of another for the purposes 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 a 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.
- (7) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

- (8) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

#### **Textual Amendments**

- F5** 1989 s.53(2)(f). *Previously*  
“director's or higher-paid employment (within the meaning of section 167)”.

#### **Marginal Citations**

- M20** Source—1970 s.284(1)  
**M21** Source—1970 s.284(2)  
**M22** Source—1970 s.284(2)(a); 1976 Sch.9 15  
**M23** Source—1970 s.284(2)(aa); 1980 s.51(4)  
**M24** Source—1970 s.284(2)(b); 1976 Sch.9 15; 1977 s.35(4)  
**M25** Source—1970 s.284(3); 1976 Sch.9 16  
**M26** Source—1970 s.284(4)-(7)

## **CHAPTER II**

### **CHARGES TO TAX IN CONNECTION WITH LOANS**

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

- C30** See 1989 s.107 and Sch.12—*close companies: administrative provisions.*

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#### **419 Loans to participators etc.**

- (1) <sup>M27</sup>Subject to the following provisions of this section and section 420, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to such proportion of the amount of the loan or advance as corresponds to the rate of advance corporation tax in force for the financial year in which the loan or advance is made.

In relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, this subsection shall have effect with the substitution for “assessed on and recoverable” of “due”.

- (2) <sup>M28</sup>For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—
- (a) that person incurs a debt to the close company; or
  - (b) a debt due from that person to a third party is assigned to the close company;
- and then the close company shall be regarded as making a loan of an amount equal to the debt.
- (3) <sup>M29</sup>Tax shall be assessable by virtue of this section whether or not the whole or any part of the loan or advance in question has been repaid at the time of the assessment; and tax assessed by virtue of this section shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

The preceding provisions of this subsection shall not apply in relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, but in relation to any such loan or advance tax due by virtue of this section shall be due and payable within 14 days after the end of the accounting period in which the loan or advance was made.

- (4) <sup>M30</sup>Where a close company has made a loan or advance which gave rise to a charge to tax on the company under subsection (1) above and the loan or advance or any part of it is repaid to the company, relief shall be given from that tax, or a proportionate part of it, by discharge or repayment.

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the financial year in which the repayment is made.

- (5) <sup>M31</sup>Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—
- (a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and
  - (b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

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then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to him.

- (6) In subsections (1) and (5)(b) above the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in the United Kingdom.
- (7) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

#### Subordinate Legislation Made

**P1** S. 419(1)(3): 30.9.1993 appointed for the purposes of s. 419(1)(3) by S.I. 1992/3066, art. 2(2)(b)

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

**C31** See 1970(M) s.109—*application of s.419 to corporation tax enactments generally.*

#### Marginal Citations

**M27** Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)

**M28** Source—1970 s.286(2)

**M29** Source—1970 s.286(4); 1986 s.43(1); 1987 (No.2) s.90(3)

**M30** Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44

**M31** Source—1970 s.286(7)-(9)

## 420 Exceptions from section 419.

- (1) <sup>M32</sup>Section 419(2)(a) shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.
- (2) <sup>M33</sup>Section 419(1) shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—
- (a) neither the amount of the loan, nor that amount when taken together with any other outstanding loans which—
    - (i) were made by the close company or any of its associated companies to the borrower *the wife or husband of the borrower*<sup>F6</sup>; and
    - (ii) if made before 31st March 1971, were made for the purpose of purchasing a dwelling which was or was to be the borrower's only or main residence;
 exceeds £15,000 and the outstanding loans falling within sub-paragraph (ii) above do not together exceed £10,000; and
  - (b) the borrower works full-time for the close company or any of its associated companies; and
  - (c) the borrower does not have a material interest in the close company or in any associated company of the close company;

but if the borrower acquires such a material interest at a time when the whole or part of any such loan made after 30th March 1971 remains outstanding the close company

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shall be regarded as making to him at that time a loan of an amount equal to the sum outstanding.

Section 168(11) shall apply for the purpose of determining whether a person has, for the purpose of this subsection, a material interest in a company, but with the omission of the words following “417(3)”.

#### Textual Amendments

**F6** Words omitted where the loan first mentioned in s. 420(2) is made on or after 6 April 1990—see 1988(F) s. 35 and Sch. 3 para. 16.

#### Marginal Citations

**M32** Source—1970 s.286(2)

**M33** Source—1970 s.286(3), (9); 1971 s.25(5); 1972 Sch.17 3(3)

### 421 Taxation of borrower when loan under section 419 released etc

- (1) Subject to the following provisions of this section, where a company is assessed or liable to be assessed under section 419 in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, then—
  - (a) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to the amount so released or written off shall be treated as income received by him after deduction of income tax from a corresponding gross amount;
  - (b) no repayment of income tax shall be made in respect of that income and no assessment shall be made on him in respect of income tax at the basic rate on that income;
  - (c) the income included by virtue of paragraph (a) above in his total income shall, notwithstanding that paragraph, be treated for the purposes of sections 348 and 349(1) as not brought into charge to income tax;
  - (d) for the purpose of determining whether any or what amount of tax is, by virtue of paragraph (a) above, to be taken into account as having been deducted from a gross amount in the case of an individual whose total income is reduced by any deductions so much only of that gross amount shall be taken into account as is part of his total income as so reduced.
- (2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative, within the meaning of Part XVI, the amount treated as received by him shall accordingly be included for the purposes of that Part in the aggregate income of the estate) and subsection (1) above shall apply accordingly with the necessary modifications.
- (3) <sup>M34</sup>This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 677, except so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (6) of that section).

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(4) This section shall be construed as one with section 419.

#### **Marginal Citations**

**M34** Source—1970 s.287(3), (4)

#### **422 Extension of section 419 to loans by companies controlled by close companies.**

- (1) Subject to subsection (4) below, where a company which is controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419, that section and section 420 shall apply as if the loan had been made by the close company.
- (2) <sup>M35</sup>Subject to subsection (4) below, where a company which is not controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419 and a close company subsequently acquires control of it, that section and section 420 shall apply as if the loan had been made by the close company immediately after the time when it acquired control.
- (3) Where two or more close companies together control the company that makes or has made the loan, subsections (1) and (2) above shall have effect—
  - (a) as if each of them controlled that company; and
  - (b) as if the loan had been made by each of those close companies,
 but the loan shall be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in the company that makes or has made the loan.
- (4) Subsections (1) and (2) above do not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by him) as a result of which there is a connection—
  - (a) between the making of the loan and the acquisition of control; or
  - (b) between the making of the loan and the provision by the close company of funds for the company making the loan;
 and the close company shall be regarded as providing funds for the company making the loan if it directly or indirectly makes any payment or transfers any property to, or releases or satisfies (in whole or in part) a liability of, the company making the loan.
- (5) Where, by virtue of this section, sections 419 and 420 have effect as if a loan made by one company had been made by another, any question under those sections or section 421 whether—
  - (a) the company making the loan did so otherwise than in the ordinary course of a business carried on by it which includes the lending of money;
  - (b) the loan or any part of it has been repaid to the company;
  - (c) the company has released or written off the whole or part of the debt in respect of the loan,
 shall be determined by reference to the company that makes the loan.
- (6) This section shall be construed as one with section 419 and section 420 and in this section—
  - (a) “loan” includes advance; and

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- (b) references to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan by virtue of section 419(2).

**Marginal Citations**

M35 Source—1970 s.287A 1976 s.44(2)

[<sup>F7</sup>CHAPTER III

APPORTIONMENT OF UNDISTRIBUTED INCOME ETC.]

**Textual Amendments**

F7 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), Sch. 17 Pt. 5, Note 4 (with s. 103(2))

<sup>F8</sup>423 Apportionment of certain income, deductions and interest.

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**Textual Amendments**

F8 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), Sch. 17 Pt. 5, Note 4 (with s. 103(2))

<sup>F9</sup>424 Exclusions from section 423.

.....

**Textual Amendments**

F9 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), Sch. 17 Pt. 5, Note 4 (with s. 103(2))

<sup>F10</sup>425 Manner of apportionment.

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**Textual Amendments**

F10 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), Sch. 17 Pt. 5, Note 4 (with s. 103(2))

<sup>F11</sup>426 Charge to income tax where apportionment is to an individual.

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**Textual Amendments**

**F11** Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

**F12 427 Reduction of charge under section 426 in certain cases.**

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**Textual Amendments**

**F12** Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

**F13 428 Increase of apportioned sum etc. by reference to ACT.**

.....

**Textual Amendments**

**F13** Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

**F14 429 Payment and collection of income tax.**

.....

**Textual Amendments**

**F14** Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

**F15 430 Consequences of apportionment: ACT.**

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**Textual Amendments**

**F15** Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))



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