



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

CHAPTER II

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

209 **Meaning of “distribution”.**

- (1) ^{M1}The following provisions of this Chapter, together with section 418, shall, subject to section 339(6) and to any other express exceptions, have effect with respect to the meaning of “distribution” and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.
- (2) In the Corporation Tax Acts “distribution”, in relation to any company, means—
- (a) ^{M2}any dividend paid by the company, including a capital dividend;
 - (b) subject to subsections (5) and (6) below, any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;
 - (c) subject to section 230, any redeemable share capital or any security issued by the company in respect of shares in or securities of the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration;
 - (d) ^{M3}any interest or other distribution out of assets of the company in respect of securities of the company, where they are securities under which the

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consideration given by the company for the use of the principal thereby secured represents more than a reasonable commercial return for the use of that principal, except so much, if any, of any such distribution as represents that principal and so much as represents a reasonable commercial return for the use of that principal;

- (e) ^{M4}any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured and except so much of any distribution as falls within paragraph (d) above), where the securities are—
- (i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 in respect of shares and securities issued before 6th April 1972 in respect of securities; or
 - (ii) securities convertible directly or indirectly into shares in the company or securities issued after 5th April 1972 and carrying any right to receive shares in or securities of the company, not being (in either case) securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted; or
 - (iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it; or
 - (iv) securities issued by the company (“the issuing company”) and held by a company not resident in the United Kingdom where the issuing company is a 75 per cent. subsidiary of the other company or both are 75 per cent. subsidiaries of a third company which is not resident in the United Kingdom; or
 - (v) securities issued by the company (“the issuing company”) and held by a company not resident in the United Kingdom (“the non-resident company”) where less than 90 per cent. of the share capital of the issuing company is directly owned by a company resident in the United Kingdom and both the issuing company and the non-resident company are 75 per cent. subsidiaries of a third company which is resident in the United Kingdom; or
 - (vi) securities which are connected with shares in the company, and for this purpose securities are so connected if, in consequence of the nature of the rights attaching to the securities or shares and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares [^{F1}or;
 - (vii) equity notes issued by the company (“the issuing company”) and held by a company which is associated with the issuing company or is a funded company;]
 - (f) any such amount as is required to be treated as a distribution by subsection (4) below or section 210.
- (3) ^{M5}Without prejudice to section 254(11), no amount shall be regarded for the purposes of subsection (2)(d) and (e) above as representing the principal secured by a security issued after 5th April 1972 in so far as it exceeds any new consideration which has been received by the company for the issue of the security.

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- (4) ^{M6}Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall, subject to subsections (5) and (6) below, be treated as making a distribution to him of an amount equal to the difference.
- (5) Subsection (4) above shall not apply where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident; and any amount which would apart from this subsection be a distribution shall not constitute a distribution by virtue of subsection (2)(b) above.
- (6) ^{M7}No transfer of assets (other than cash) or of liabilities between one company and another shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (4) above if they are companies—
- (a) both of which are resident in the United Kingdom and neither of which is a 51 per cent. subsidiary of a company not so resident; and
 - (b) which, neither at the time of the transfer nor as a result of it, are under common control.

For the purposes of this subsection two companies are under common control if they are under the control of the same person or persons, and for this purpose “control” shall be construed in accordance with section 416.

- (7) ^{M8}The question whether one body corporate is a subsidiary of another for the purpose of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate, if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
 - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
 - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (8) ^{M9}For the purposes of subsection (2)(c) above—
- (a) the value of any redeemable share capital shall be taken to be the amount of the share capital together with any premium payable on redemption, or in a winding up, or in any other circumstances; and
 - (b) the value of any security shall be taken to be the amount of the principal thereby secured (including any premium payable at maturity or in a winding up, or in any other circumstances);
- and in determining the amount of the distribution constituted by the issue of any redeemable share capital or any security, the capital or security shall be taken at that value.
- [^{F2}(9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—
- (a) the security’s terms contain no particular date by which it is to be redeemed,
 - (b) under the security’s terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,

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

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

- (10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—
 - (a) the issuing company is a 75 per cent. subsidiary of the other company,
 - (b) the other company is a 75 per cent. subsidiary of the issuing company, or
 - (c) both are 75 per cent. subsidiaries of a third company.
- (11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.]

Textual Amendments

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

Marginal Citations

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

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