Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 1

TRANSACTIONS IN SECURITIES

Circumstances in which income tax advantages obtained or obtainable

686 Abnormal dividends used for exemptions or reliefs (circumstance A)

(1) This section applies in relation to a person if subsections (2) to (4) apply.

(2) The person receives an abnormal amount by way of dividend (see section 692).

(3) The receipt is in connection with—
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
- (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
- (c) the distribution, transfer or realisation of assets of a company, or
- (d) the application of such assets in discharge of liabilities.

(4) The amount so received is taken into account for the purposes of—
- (a) any exemption from income tax,
- (b) the setting-off of losses against profits or income, or
- (c) the giving of relief under section 383 (relief for interest payments).

687 Deductions from profits obtained following distribution or dealings (circumstance B)

(1) This section applies in relation to a person if subsections (2) to (4) apply.

(2) The person becomes entitled—
- (a) in respect of securities held or sold by the person, or
- (b) in respect of securities formerly held by the person,

to a deduction in calculating profits or gains.

(3) The entitlement arises in connection with—
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
- (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
- (c) the distribution, transfer or realisation of assets of a company, or
- (d) the application of such assets in discharge of liabilities.

(4) The entitlement arises because of a fall in the value of the securities resulting from—
- (a) the payment of a dividend on them, or
- (b) any other dealing with any assets of a company.

(5) Subsection (2)(b) applies whether or not the person has sold the securities.

688 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)

(1) This section applies in relation to a person ("A") if subsections (2), (3) and (6) apply.

(2) A receives consideration which—
- (a) is or represents the value of—
  - (i) assets which are available for distribution by a company by way of dividend, or
  - (ii) assets which would have been so available apart from anything done by the company,
- (b) is received in respect of future receipts of a company, or
- (c) is or represents the value of trading stock of a company.

(3) The receipt is in consequence of a transaction whereby another person ("B")—
- (a) subsequently receives, or has received, an abnormal amount by way of dividend (see section 692), or
- (b) subsequently becomes entitled, or has become entitled—
  - (i) in respect of securities held or sold by B, or
  - (ii) in respect of securities formerly held by B,

  to a deduction in calculating profits or gains, if the entitlement meets the conditions in subsections (4) and (5).

(4) The entitlement must arise in connection with—
- (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
- (b) the sale of securities where the sale is followed by the purchase of the same or other securities,

(c) the distribution, transfer or realisation of assets of a company, or
(d) the application of such assets in discharge of liabilities.

(5) The entitlement must arise because of a fall in the value of the securities resulting from—
(a) the payment of a dividend on them, or
(b) any other dealing with any assets of a company.

(6) The receipt of the consideration is such that A does not pay or bear income tax on it (apart from this Chapter).

(7) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.

(8) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

(9) Subsection (3)(b)(ii) applies whether or not B has sold the securities.

689 Receipt of consideration in connection with relevant company distribution (circumstance D)

(1) This section applies in relation to a person if subsections (2) to (4) apply.

(2) The person receives consideration in connection with—
(a) the distribution, transfer or realisation of assets of a relevant company (see section 691), or
(b) the application of such assets in discharge of liabilities.

(3) The consideration—
(a) is or represents the value of—
(i) assets which are available for distribution by way of dividend by the company, or
(ii) assets which would have been so available apart from anything done by the company,
(b) is received in respect of future receipts of the company, or
(c) is or represents the value of trading stock of the company.

(4) The person so receives the consideration that the person does not pay or bear income tax on it (apart from this Chapter).

(5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.

(6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

690 Receipt of assets of relevant company (circumstance E)

(1) This section applies in relation to a person if subsections (2) to (4) and (7) apply.

(2) The person receives consideration in connection with—

(a) the direct or indirect transfer of assets of a relevant company (see section 691) to another such company, or

(b) any transaction in securities in which two or more relevant companies are concerned.

(3) The consideration is or represents the value of assets which—

(a) are available for distribution by way of dividend by a relevant company,

(b) would have been so available apart from anything done by the company, or

(c) are trading stock of a relevant company.

(4) The consideration consists of any share capital or any security issued by a relevant company.

(5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).

(6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the company.

(7) The person does not pay or bear income tax on the consideration (apart from this Chapter).

(8) In this section—

(a) references to the receipt of consideration include references to the receipt of any money or money's worth,

(b) "security" has the meaning given in section 254(1) of ICTA (interpretation of Part 6 of ICTA: company distributions, tax credits etc), and

(c) "share" includes stock and any other interest of a member in a company.

691 Meaning of "relevant company" in sections 689 and 690

(1) A company is a relevant company for the purposes of sections 689 and 690 if it is—

(a) a company under the control of not more than 5 persons (but see subsection (2)), or

(b) any other company none of whose shares or stocks is—

(i) listed in the Official List of the Stock Exchange, and

(ii) dealt in on the Stock Exchange regularly or from time to time.

(2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.

(3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.

(4) In this section "control" has the meaning given by section 416(2) to (6) of ICTA (close companies: meaning of "associated company" and "control").

692 Abnormal dividends: general

(1) An amount received by way of dividend is treated as abnormal for the purposes of this Chapter if the appropriate authority is satisfied—

(a) in any case that the excessive return condition is met (see section 693), or
(b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 694).

(2) In subsection (1) "the appropriate authority" means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Chapter—
(a) an officer of Revenue and Customs,
(b) the Commissioners for Her Majesty's Revenue and Customs,
(c) the Special Commissioners, or
(d) the tribunal appointed under section 704.

693 Abnormal dividends: the excessive return condition

(1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.

(2) In this section "the relevant securities" means–
(a) the securities in respect of which the dividend was received, and
(b) if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.

(3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had—
(a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and
(b) to any dividends paid and other distributions made in respect of them during that time.

(4) If—
(a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or
(b) no consideration was so provided,

for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

694 Abnormal dividends: the excessive accrual condition

(1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—
(a) the dividend had accrued from day to day, and
(b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.

(2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—
(a) sell or otherwise dispose of any of the securities or any securities similar to them, or
(b) acquire an option to sell any of the securities or any securities similar to them.

(3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—

(a) to the same rights against the same persons as to capital and interest, and
(b) to the same remedies for the enforcement of those rights.

(4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.

(5) Subsection (3) applies despite any differences—
(a) in the total nominal amounts of the respective securities,
(b) in the form in which they are held, or
(c) in the manner in which they can be transferred.