



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 8

#### INTANGIBLE FIXED ASSETS

#### CHAPTER 12

#### RELATED PARTIES

#### *Introductory*

#### **834 Overview of Chapter**

- (1) This Chapter deals with the question whether a person and a company are related parties for the purposes of this Part.
- (2) That question is relevant, in particular, for Chapter 13 (transactions between related parties).

#### *Meaning of “related party”, “control” and “major interest”*

#### **835 “Related party”**

- (1) This section explains when a person (“A”) is a “related party” in relation to a company (“B”) for the purposes of this Part.
- (2) In a case where A is a company, A is a related party in relation to B if—
  - (a) A has control of, or holds a major interest in, B, or
  - (b) B has control of, or holds a major interest in, A.
- (3) In a case where A is a company, A is a related party in relation to B if A and B are both under the control of the same person (but see subsection (4)).

*Status: Point in time view as at 22/04/2009.*

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- (4) Subsection (3) does not apply if the person controlling both A and B is—
- (a) the Crown,
  - (b) a Minister of the Crown or a government department,
  - (c) the Scottish Ministers,
  - (d) the National Assembly for Wales,
  - (e) a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
  - (f) a foreign sovereign power, or
  - (g) an international organisation.
- (5) A is a related party in relation to B if B is a close company and A is, or is an associate of—
- (a) a participator in B, or
  - (b) a participator in a company that has control of, or holds a major interest in, B.
- (6) In a case where A is a company, A is a related party in relation to B if B is another company in the same group.
- (7) A is treated as being a related party in relation to B if A would be so but for any person (other than an individual) being the subject of—
- (a) insolvency arrangements, or
  - (b) equivalent arrangements under the law of any country or territory, whether made when the person is solvent or insolvent.
- (8) In subsection (7) “insolvency arrangements” includes—
- (a) arrangements under which a person acts as the liquidator, provisional liquidator, receiver, administrator or administrative receiver of a company or firm, and
  - (b) voluntary arrangements proposed or approved in relation to a company or firm under Part 1 of the Insolvency Act 1986 (c. 45) or Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (9) In subsection (8)—
- “administrative receiver” has the meaning given in section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989,
- “administrator” means a person appointed to manage the affairs, business and property of the company or firm under Schedule B1 to that Act or Order,
- “receiver” means a person appointed as receiver of some or all of the property of the company or firm under an enactment or under an instrument issued for the purpose of representing security for, or the rights of creditors in respect of, any debt.
- (10) For the meaning of “control”, “major interest”, “associate”, “participator”, see sections 836, 837 and 841.

### **836 “Control”**

- (1) For the purposes of this Chapter, in relation to a company, “control” means the power of a person to secure that the company's affairs are conducted in accordance with the person's wishes—

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- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) as a result of powers conferred by the articles of association or other document regulating the company or any other company.
- (2) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has control of a company.

### **837 “Major interest”**

- (1) For the purposes of this Chapter, a person has a “major interest” in a company if—
- (a) the person and one other person together have control of that company, and
  - (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.
- (2) The reference in subsection (1)(a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in section 836.
- (3) Sections 838 to 840 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has a major interest in a company.

#### *Rights and powers to be taken into account*

### **838 General rule**

- (1) This section provides for a person (“A”) to be treated as having rights and powers where A's rights or powers are relevant in determining if a person—
- (a) has control of a company, or
  - (b) has a major interest in a company.
- (2) A is treated as having rights and powers that A—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (3) A is treated as having rights and powers of other persons, so far as they are required or may be required to be exercised in any one or more of the following ways—
- (a) on A's behalf,
  - (b) under A's direction, or
  - (c) for A's benefit.
- (4) A is treated as having rights and powers of a person connected with A (see section 842).
- (5) A is treated as having rights and powers that a person connected with A would be treated as having if that person were a person whose rights or powers are relevant in determining if a person has control of or a major interest in a company.
- (6) For the purposes of subsections (3) to (5), a person is treated as having rights or powers that the person—
- (a) is entitled to acquire at a future date, or

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(b) will, at a future date, become entitled to acquire.

(7) Subsection (3) does not apply to rights and powers conferred in relation to property of a borrower by the terms of any security relating to the borrower's loan.

### **839 Rights and powers held jointly**

(1) References in this Chapter—

(a) to rights and powers of a person, or

(b) to rights and powers that a person is or will become entitled to acquire,

include rights or powers that are exercisable by that person, or when acquired will be exercisable by that person, only jointly with one or more other persons.

(2) Subsection (1) is subject to section 840 (partnerships).

### **840 Partnerships**

(1) The rights and powers of a person as a member of a firm are ignored unless the person has control of or a major interest in the firm.

(2) Whether a person has control of or a major interest in a firm is determined in accordance with sections 836 to 839 as in relation to a company.

(3) For the purposes of subsection (2), references in those sections to any other company must be read as including any other firm.

#### *Meaning of “participator” and “associate”*

### **841 “Participator” and “associate”**

(1) In this Chapter “participator”, in relation to a close company, has the meaning it has for the purposes of Part 11 of ICTA (close companies) (see section 417(1) of that Act), except as provided in subsection (2).

(2) “Participator” does not include a person just because the person is a loan creditor of the company within the meaning of that Part (see section 417(7) to (9) of ICTA).

(3) In this Chapter “associate”, in relation to a participator in a close company, has the meaning given by section 417(3) of ICTA.

#### *Connected persons*

### **842 Introduction**

(1) Section 843 explains what is meant in this Chapter when a person is referred to as being connected with another person.

(2) If that section provides that one person (“A”) is connected with another person (“B”), B is connected with A too.

(3) In that section—

“relative” means brother, sister, ancestor or lineal descendant, and

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“settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA (see section 620 of that Act).

### **843 Who are connected persons**

- (1) An individual (“A”) is connected with another individual (“B”) if—
  - (a) A is B's spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B's spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B's spouse or civil partner.
- (2) A person in the capacity of a trustee of a settlement is connected with—
  - (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual, and
  - (c) any body corporate that is connected with the settlement.
- (3) For the purposes of subsection (2) a body corporate is connected with a settlement if—
  - (a) it is a close company (or not a close company only because it is not UK resident) and the participators include the trustees of the settlement, or
  - (b) it is controlled by a company within paragraph (a).
- (4) A person is connected with a company if they are related parties because of section 835(2) or (3).
- (5) For the purposes of subsection (4) and for the purposes of section 835 as it applies for the purposes of subsection (4)—
  - (a) “company” includes any body corporate or unincorporated association, but does not include a firm, and
  - (b) a unit trust scheme is treated as if it were a company and as if the rights of the unit holders were shares in the company.

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