



Corporation Tax Act 2010

2010 CHAPTER 4

PART 23

COMPANY DISTRIBUTIONS

CHAPTER 3

MATTERS WHICH ARE NOT DISTRIBUTIONS

Introduction

1029 Overview of Chapter

- (1) In this Chapter the following sections provide that a particular matter is not a distribution—
- (a) section 1030 (distributions in respect of share capital on a winding up),
 - (b) section 1031 (distribution as part of a cross-border merger),
 - (c) section 1032 (interest etc paid in respect of certain securities),
 - (d) section 1033 (purchase by unquoted trading company of own shares),
 - (e) section 1049 (stock dividends),
 - (f) section 1054 (building society payments),
 - (g) section 1055 (industrial and provident societies: interest and share dividends),
 - (h) section 1056 (dividend or bonus relating to transactions with industrial and provident society), and
 - (i) section 1057 (UK agricultural or fishing co-operatives: interest and share dividends).
- (2) The following make similar provision outside this Chapter—
- (a) section 1075 (exempt distributions), and
 - (b) paragraph 6 of Schedule 12 to FA 1988 (transfer of building society's business to a company: qualifying benefits).

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Distributions in a winding up

1030 Distribution in respect of share capital in a winding up

A distribution made in respect of share capital in a winding up is not a distribution of a company for the purposes of the Corporation Tax Acts.

Distribution as part of a cross-border merger

1031 Distribution as part of a cross-border merger

If—

- (a) a company making a distribution as part of a merger ceases to exist (without being wound up), and
- (b) section 140E or 140F of TCGA 1992 (cross-border mergers) applies in relation to the merger,

the distribution is not a distribution of a company for the purposes of the Corporation Tax Acts.

Payments of interest

1032 Interest etc paid in respect of certain securities

- (1) Any interest or other distribution which—
 - (a) is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax,
 - (b) is paid in respect of securities of the borrower which are special securities (as defined in section 1015), and
 - (c) does not fall within paragraph E in section 1000(1) (distributions in respect of non-commercial securities),
 is not a distribution for the purposes of the Corporation Tax Acts.
- (2) But subsection (1) does not apply if the company to which the interest or other distribution is paid is entitled under any enactment to an exemption from tax in respect of that interest or distribution.

Purchase of own shares

1033 Purchase by unquoted trading company of own shares

- (1) A payment made by a company on the redemption, repayment or purchase of its own shares is not a distribution for the purposes of the Corporation Tax Acts if—
 - (a) the company is an unquoted trading company, or the unquoted holding company of a trading group, and
 - (b) either Condition A or Condition B is met.
- (2) Condition A is that—

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- (a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or any of its 75% subsidiaries,
 - (b) the redemption, repayment or purchase 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
 - (c) the requirements set out in sections 1034 to 1043 (so far as applicable) are met.
- (3) Condition B is that 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)—
- (a) is applied by the person to whom it is made in discharging a liability of that person for inheritance tax charged on a death, and
 - (b) is applied in that way within two years after the death.
- (4) But if condition B is met, subsection (1) does not apply so far as the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of—
- (a) shares in the company, or
 - (b) shares in another unquoted company which is a trading company or the holding company of a trading group.
- (5) In sections 1034 to 1043—
- “the purchase” means the redemption, repayment or purchase referred to in subsection (1), and
 - “the seller” means the owner of the shares at the time the redemption, repayment or purchase is made.
- (6) In this section and sections 1034 to 1047 references to a payment made by a company include anything else that—
- (a) is a distribution, or
 - (b) would be a distribution but for this section.

1034 Requirements as to residence

- (1) The seller must be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.
- (2) If the shares are held through a nominee, the nominee must also be resident and ordinarily resident in the United Kingdom in the tax year in which the purchase is made.
- (3) The residence and ordinary residence of personal representatives are taken for the purposes of this section to be the same as the deceased person’s residence and ordinary residence immediately before that person’s death.
- (4) The references in this section to a person’s ordinary residence are to be ignored in the case of a company.

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1035 Requirement as to period of ownership

- (1) The shares must have been owned by the seller throughout the 5 years ending with the date of the purchase.
- (2) In determining whether the requirement in subsection (1) is met in a case where the seller acquired shares of the same class at different times—
 - (a) shares acquired earlier are taken into account before shares acquired later, and
 - (b) any previous disposal by the seller of shares of that class is assumed to be a disposal of shares acquired later rather than of shares acquired earlier.
- (3) If the time when any shares were acquired would be determined for the purposes of capital gains tax under any provision of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital, conversion of securities etc) then, unless the shares—
 - (a) were allotted for payment, or
 - (b) were comprised in share capital to which section 1049 (stock dividends) applies,
 the time when the shares were acquired is determined in the same way for the purposes of this section.

1036 Determining the period of ownership

- (1) If at any time during the period mentioned in section 1035(1) the shares were transferred to the seller by a person (“the transferor”) who—
 - (a) was then the seller’s spouse or civil partner, and
 - (b) was then living with the seller (see section 1116),
 any period during which the shares were owned by the transferor is treated for the purposes of section 1035(1) as a period of ownership by the seller.
- (2) But subsection (1) does not apply if at the date of the purchase the transferor is alive but is no longer the seller’s spouse or civil partner living with the seller.
- (3) If the seller 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—
 - (a) any period during which the shares were owned by the previous owner, or the personal representatives of the previous owner, is treated for the purposes of section 1035(1) as a period of ownership by the seller, and
 - (b) section 1035(1) has effect as if it referred to three years instead of five.

1037 Requirement as to reduction of seller’s interest as shareholder

- (1) If, immediately after the purchase, the seller owns shares in the company, the seller’s interest as a shareholder must be substantially reduced.
 This is subject to section 1043.
- (2) If, immediately after the purchase, any associate of the seller owns shares in the company, the combined interests as shareholders of the seller and the seller’s associates must be substantially reduced.
 This is subject to section 1043.
- (3) The seller’s interest as a shareholder is substantially reduced if (and only if) the seller’s subsequent interest is not more than 75% of the seller’s prior interest.

This is subject to section 1038.

- (4) “The seller’s prior interest” means the total nominal value of the shares owned by the seller immediately before the purchase, expressed as a fraction of the issued share capital of the company at that time.
- (5) “The seller’s subsequent interest” means the total nominal value of the shares owned by the seller immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time.
- (6) The question whether the combined interests as shareholders of the seller and the seller’s associates are substantially reduced is determined in the same way as the question whether a seller’s interest as shareholder is substantially reduced, except that the seller is assumed to have the interests of the seller’s associates as well as the seller’s own.

1038 Section 1037: effect of entitlement to profits

- (1) The seller’s interest as a shareholder is not taken to be substantially reduced for the purposes of section 1037(1) if—
 - (a) the seller 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 is more than 75% of the corresponding fraction immediately before the purchase.
- (2) In determining for the purposes of subsection (1) the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts is regarded as entitled to a distribution of the amount, or maximum amount, to which the person would be entitled for a year.
- (3) In subsection (1) “profits available for distribution” has the meaning given by section 830(2) of the Companies Act 2006, but with the differences mentioned in subsections (4) and (5).
- (4) For the purposes of subsection (1) the amount of the profits available for distribution (whether immediately before or immediately after the purchase) is 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 calculated by reference to fixed rates or amounts, by a further amount equal to that required to make the distribution to which the person is entitled in accordance with subsection (2).
- (5) If the total of the sums payable by the company—
 - (a) on the purchase, and
 - (b) on any redemption, repayment or purchase of other shares of the company taking place at the same time,exceeds the amount of the profits available for distribution immediately before the purchase, that amount is treated as further increased by an amount equal to the excess.
- (6) References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

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1039 Requirements where purchasing company is a member of a group

- (1) This section applies if the company making the purchase is immediately before the purchase a member of a group.
- (2) In this section and sections 1040 to 1041 that group is referred to as “the purchaser’s group”.
- (3) If—
 - (a) immediately after the purchase the seller owns shares in one or more other members of the purchaser’s group (whether or not the seller then owns shares in the company making the purchase), or
 - (b) immediately after the purchase the seller owns shares in the company making the purchase, and immediately before the purchase the seller owns shares in one or more other members of the group,
 the seller’s interest as a shareholder in the group must be substantially reduced (see section 1040(1)).
- (4) If immediately before the purchase an associate of the seller owns shares in any member of the purchaser’s group, the combined interests as shareholders in the group of the seller and the seller’s associates must be substantially reduced (see section 1040(4)).
- (5) This section is subject to section 1043 (relaxation of requirements in certain cases).

1040 Determining whether interests as shareholders in a group are substantially reduced

- (1) The seller’s interest as a shareholder in the purchaser’s group is taken to be substantially reduced if (and only if) it is not more than 75% of the corresponding interest immediately before the purchase.
 This is subject to section 1041(1).
- (2) The seller’s interest as a shareholder in the group is calculated by—
 - (a) expressing the total nominal value of the shares owned by the seller in each relevant company as a fraction of the issued share capital of the company,
 - (b) adding together the fractions obtained under paragraph (a), and
 - (c) dividing the result by the number of relevant companies (including any in which the seller owns no shares).
- (3) In this section and section 1041 “relevant company” means—
 - (a) the company making the purchase, and
 - (b) any other member of the purchaser’s group in which the seller owns shares immediately before or immediately after the purchase.
 This is subject to subsection (4).
- (4) The question whether the combined interests as shareholders in the purchaser’s group of the seller and the seller’s associates are substantially reduced is determined in the same way as the question whether a seller’s interest as a shareholder in a group is substantially reduced, except that—
 - (a) the seller is assumed to have the interests of the seller’s associates as well as the seller’s own, and

- (b) references in subsection (2) and section 1041(2) to a relevant company are read accordingly.

1041 Section 1040: effect of entitlement to profits

- (1) The seller's interest as a shareholder in the purchaser's group is not taken to be substantially reduced if—
 - (a) the seller 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) the new entitlement exceeds 75% of the old entitlement.
- (2) In subsection (1)—
 - “the new entitlement” means the share, or the aggregate of the shares, mentioned in subsection (1)(a), expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—
 - (a) a relevant company, or
 - (b) a 51% subsidiary of a relevant company, and
 - “the old entitlement” means the corresponding fraction immediately before the purchase.
- (3) Subsections (2) to (5) of section 1038 apply for the purposes of this section as they apply for the purposes of section 1038(1).

1042 Other requirements

- (1) The seller must not, immediately after the purchase, be connected with—
 - (a) the company making the purchase, or
 - (b) any other company which is a member of the same group as that company.
- (2) The purchase must not be part of a scheme or arrangement which is designed, or likely, to result in—
 - (a) the seller, or
 - (b) an associate of the seller,having disqualifying interests in the company.
- (3) For the purposes of subsection (2), interests in the company are disqualifying interests if any of the requirements in subsection (1) and sections 1037 and 1039 could not be met if the person in question had those interests immediately after the purchase.
- (4) A transaction occurring within one year after the purchase is treated for the purposes of subsection (2) as part of a scheme or arrangement of which the purchase is also part.
- (5) Subsections (1) and (2) are subject to section 1043.

1043 Relaxation of requirements in certain cases

- (1) Subsection (2) applies if—
 - (a) any requirement under any of sections 1037 to 1042 which is applicable is not met in relation to the seller, but

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- (b) the seller proposed or agreed to the purchase in order that the requirement in section 1037(2) or 1039(4) could be met in respect of the redemption, repayment or purchase of shares owned by a person of whom the seller is an associate.
- (2) So far as that result is achieved through the purchase, section 1033(2) has effect as if the requirements in sections 1037 to 1042 were met in relation to the seller.

Purchase of own shares: supplementary

1044 Advance clearance of payments by Commissioners

- (1) A company may make an application under this section to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") before making a payment on the redemption, repayment or purchase of its own shares.
- (2) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will apply to it, the payment is treated as one to which section 1033 applies.
- (3) If, before the payment is made, the Commissioners notify the company that they are satisfied that section 1033 will not apply to it, the payment is treated as one to which section 1033 does not apply.

1045 Advance clearance: supplementary

- (1) An application under section 1044—
 - (a) must be in writing, and
 - (b) must contain particulars of the relevant transactions.
- (2) The Commissioners may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (3) The power under subsection (2) must be exercised within 30 days of the receipt of—
 - (a) the application, or
 - (b) any further particulars previously required under subsection (2).
- (4) If a notice under subsection (2) is not complied with within 30 days, or any longer period that the Commissioners may allow, the Commissioners need not proceed further on the application.
- (5) The Commissioners must notify their decision to the applicant—
 - (a) within 30 days of receiving the application, or
 - (b) if they give notice under subsection (2), within 30 days of the notice being complied with.
- (6) If particulars provided under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Commissioners, any resulting notification by the Commissioners is void.

1046 Information and returns

- (1) A company which treats a payment made by it as one to which section 1033 applies must make a return to an officer of Revenue and Customs giving details of—
 - (a) the payment, and
 - (b) the circumstances by reason of which section 1033 is regarded as applying to it.
- (2) The return must be made within 60 days after the payment.
- (3) A person connected with a company must give notice to an officer of Revenue and Customs if—
 - (a) the company treats a payment made by it as one to which section 1033 applies and in relation to which Condition A in that section is met, and
 - (b) the person knows of any scheme or arrangement of the kind mentioned in section 1042(2) that affects the payment.
- (4) The notice—
 - (a) must contain particulars of the scheme or arrangement, and
 - (b) must be given within 60 days after the person first knows of both the payment and the scheme or arrangement.
- (5) If a company treats a payment made by it as one to which section 1033 applies, an officer of Revenue and Customs may require the recipient of the payment to state—
 - (a) whether it is received by the recipient on behalf of another person, and
 - (b) if so, that person's name and address.
- (6) Subsection (7) applies if—
 - (a) a company treats a payment made by it as one to which section 1033 applies, and
 - (b) the payment is received by a person on behalf of another person ("A").
- (7) An officer of Revenue and Customs may require A to state—
 - (a) whether there is another person (in addition to A) on whose behalf the payment is received, and
 - (b) if so, that person's name and address.

1047 Meaning of "group" and "51% subsidiary" in sections 1033 to 1047

- (1) In this section and sections 1033 to 1046 "group" (except in the expression "trading group") means a company which has one or more 51% subsidiaries but is not itself a 51% subsidiary of any other company, together with those subsidiaries.

This is subject to subsection (2).

- (2) If 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% subsidiary are treated as being members of the same group as the company making the purchase (whether

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or not, apart from this subsection, the company making the purchase is a member of a group).

- (3) But subsection (2) does not apply if the successor company first carried on the business in question more than 3 years before the time of the purchase.
- (4) For the purposes of this section and sections 1033 to 1046, a company which has ceased to be a 51% subsidiary of another company before the time of the purchase is treated as continuing to be a 51% subsidiary of that company if at the time of the purchase there exist arrangements under which it could again become such a subsidiary.

1048 Sections 1033 to 1047: other interpretation

- (1) In sections 1033 to 1047—
 - “holding company” means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of holding shares or securities of one or more companies which are its 75% subsidiaries,
 - “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,
 - “trading company” means a company whose business consists wholly or mainly of carrying on a trade or trades,
 - “trading group” means a group the business of whose members (taken together) consists wholly or mainly of carrying on a trade or trades, and
 - “unquoted company” means a company which is neither a quoted company nor a 51% subsidiary of a quoted company.
- (2) In the definition of “trading group” in subsection (1) “group” means a company which has one or more 75% subsidiaries, together with those subsidiaries.
- (3) References in sections 1033 to 1047 to the owner of shares are to the beneficial owner except where the shares—
 - (a) are settled property, or
 - (b) are comprised in the estate of a person who has died.

In such cases the references are to the trustees of the settlement or, as the case may be, the deceased’s personal representatives.
- (4) References in sections 1033 to 1047 to a payment made by a company are to be read in accordance with section 1033(6).

Stock dividends

1049 Stock dividends

- (1) This section applies to—
 - (a) share capital issued by a UK resident company in lieu of a cash dividend, and
 - (b) bonus share capital issued by a UK resident company in respect of shares in the company of a qualifying class.
- (2) For the purposes of subsection (1)(b) shares are of a qualifying class if—

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- (a) shares of that class carry the right to receive bonus share capital in the company (of the same or a different class), and
 - (b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.
- (3) If the share capital is issued in a case where section 410(2), (3) or (4) of ITTOIA 2005 (stock dividend income) applies—
- (a) the share capital does not, despite paragraph C in section 1000(1) (redeemable share capital), constitute a distribution within the meaning of section 1000(1), and
 - (b) the share capital is not, for the purposes of—
 - (i) section 1022 (bonus issues following repayment of share capital), or
 - (ii) section 1026 (distributions following a bonus issue),treated as issued “as paid up otherwise than by the receipt of new consideration”.
- (4) This section is subject to—
- (a) section 1050, and
 - (b) paragraph 108 of Schedule 2 (special rules for share capital issued in respect of shares issued before 6 April 1975).

1050 Application of section 1049 where bonus share capital is converted etc

- (1) This section applies if bonus share capital falling within section 1049(1)(b) is converted into, or exchanged for, shares in the company of a different class.
- (2) In this section “replacement shares” means shares in the company issued—
- (a) in connection with the conversion or exchange, and
 - (b) in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital.
- (3) Section 1049 does not apply to any replacement shares.
- (4) But if section 410 of ITTOIA 2005 (stock dividend income) applied to any of the bonus share capital, subsection (5) applies to replacement shares issued in consideration of the cancellation, extinguishment or acquisition by the company of the bonus share capital to which section 410 of ITTOIA 2005 applied.
- (5) The replacement shares referred to in subsection (4)—
- (a) do not, despite paragraph C in section 1000(1), constitute a distribution within the meaning of section 1000(1), and
 - (b) are not, for the purposes of—
 - (i) section 1022 (bonus issues following repayment of share capital), or
 - (ii) section 1026 (distributions following a bonus issue),treated as issued “as paid up otherwise than by the receipt of new consideration”.

1051 “Bonus share capital” and “in lieu of a cash dividend”

- (1) In sections 1049 and 1050 “bonus share capital” means—

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- (a) share capital issued otherwise than wholly for new consideration, or
 - (b) the part (if there is such a part) of any share capital so issued that is not properly referable to new consideration.
- (2) For the purposes of section 1049(1)(a) share capital is issued by a company in lieu of a cash dividend if—
- (a) it is issued in consequence of the exercise by a person of an option conferred on the person, and
 - (b) that option is an option to receive, in respect of shares in the company, either a dividend in cash or additional share capital.
- (3) For the purposes of subsection (2), an option to receive either a dividend in cash or additional share capital is conferred on a person not only—
- (a) if the person is required to choose one or the other, but also
 - (b) if the person is offered the one subject to a right, however expressed, to choose the other instead.
- (4) The reference in subsection (2) to a person’s exercise of an option includes a person’s abandonment of, or failure to exercise, a right such as is mentioned in subsection (3)
- (b).

1052 Share capital to which section 1049 applies: returns

- (1) If a company issues, in an accounting period, share capital to which section 1049 applies (“relevant share capital”), the company must make a return of the capital for each return period in which it was issued (see section 1053).
- (2) The return must be made—
- (a) to an officer of Revenue and Customs, and
 - (b) within 30 days from the end of the return period.
- (3) A return made under this section for a return period must give the following information for any relevant share capital issued by the company in the period—
- (a) the date on which it was issued,
 - (b) the date on which the company was first required to issue it (if different from the date on which it was issued),
 - (c) details of the terms on which it was issued, and
 - (d) what its cash equivalent is under section 412 of ITTOIA 2005.
- (4) If it appears to an officer of Revenue and Customs that a company should have, but has not, made a return under this section for a particular return period, the officer may by notice require the company to do so.
- (5) If no relevant share capital was issued by the company in the return period, a return required to be made under subsection (4) must state that that is the case.
- (6) The notice under subsection (4) must specify the period within which the return must be made.
- (7) That period must be at least 30 days.

1053 Return periods

- (1) For the purposes of section 1052 a company's return periods in any accounting period are the periods that begin and end as follows.

Rule 1

A return period begins at the beginning of the accounting period.

Rule 2

If one or more quarterly days fall within the accounting period (excluding the last day of the accounting period), the end of each such day is the end of a return period, and a new return period begins immediately afterwards.

Rule 3

A return period ends at the end of the accounting period.

- (2) For the purposes of subsection (1) the quarterly days are 31 March, 30 June, 30 September and 31 December.

Building society payments

1054 Building society payments

- (1) This section applies if—
- (a) any interest, or
 - (b) any dividend or other distribution,
- is payable in respect of shares in, or a deposit with or loan to, a building society.
- (2) No part of the interest, or of the dividend or other distribution, is a distribution of the society for corporation tax purposes.
- (3) See also section 372 of ITTOIA 2005 (which makes provision about the income tax treatment of building society dividends).

Industrial and provident society payments

1055 Industrial and provident societies: interest and share dividends

- (1) Interest paid by a registered industrial and provident society in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.
- (2) If any dividend, bonus, interest or other sum—
- (a) is paid to a shareholder in a registered industrial and provident society, and
 - (b) is payable by reference to the amount of the shareholder's holding in the society's share capital,
- it is not a distribution for corporation tax purposes.
- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.
- (4) For the purposes of this section crediting an amount counts as paying it.
- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

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1056 Dividend or bonus relating to transactions

- (1) This section applies if—
 - (a) a dividend or bonus is granted by a registered industrial and provident society, and
 - (b) section 132 of CTA 2009 (dividends etc relating to transactions with an industrial and provident society) 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 a distribution for the purposes of the Corporation Tax Acts.

Payments made by UK agricultural or fishing co-operatives

1057 UK agricultural or fishing co-operatives: interest and share dividends

- (1) Interest paid by a UK agricultural or fishing co-operative in respect of a mortgage, loan, loan stock or deposit is not a distribution for corporation tax purposes.
- (2) If any dividend, bonus, interest or other sum—
 - (a) is paid to a shareholder in a UK agricultural or fishing co-operative, and
 - (b) is payable by reference to the amount of the shareholder’s holding in the co-operative’s share capital,
 it is not a distribution for corporation tax purposes.
- (3) Subsections (1) and (2) apply even if the amount in question would otherwise be a distribution by virtue of any enactment relating to corporation tax.
- (4) For the purposes of this section crediting an amount counts as paying it.
- (5) See also section 379(1) of ITTOIA 2005 (income tax treatment of sums payable as mentioned in subsection (2)).

1058 Meaning of “UK agricultural or fishing co-operative”

- (1) In section 1057 “UK agricultural or fishing co-operative” means a co-operative association—
 - (a) which is established in the United Kingdom and UK resident, and
 - (b) whose primary object is assisting its members in—
 - (i) carrying on agricultural or horticultural businesses on land occupied by them in the United Kingdom, or
 - (ii) carrying on businesses consisting of the catching or taking of fish or shellfish.
- (2) In subsection (1) “co-operative association” means a body with a written constitution from which the Secretary of State is satisfied that it is in substance a co-operative association.
- (3) For the purposes of subsection (2) the Secretary of State must have regard to the way in which the body’s constitution provides for its income to be applied for its members’ benefit, and all other relevant provisions.

- (4) In Northern Ireland subsections (2) and (3) apply with the substitution for “the Secretary of State” of “the Department of Agriculture and Rural Development”.

Supplementary provisions

1059 Associated persons

- (1) This section and sections 1060 and 1061 contain the rules for determining whether a person is an associate of another (in relation to a company) for the purposes of this Chapter.
- (2) Two persons living together (see section 1116) who are—
- (a) a husband and wife, or
 - (b) civil partners of each other,
- are associates of one another.
- (3) If a person (“the young person”) is under the age of 18—
- (a) the young person is an associate of the young person’s parents, and
 - (b) the young person’s parents are associates of the young person.
- (4) If a person is connected with a company—
- (a) the person is an associate of the company and any company controlled by it, and
 - (b) the company and any company controlled by it are associates of the person.
- (5) If a person—
- (a) is connected with one company (“company A”), and
 - (b) has control of another company (“company B”),
- company B is an associate of company A.
- (6) If one person is accustomed to act on the directions of another in relation to the affairs of a company, the two persons are associates of one another in relation to that company.

1060 Associated persons: trustees

- (1) If shares in a company are held by the trustees of a settlement then, in relation to the company—
- (a) the trustees are associates of—
 - (i) any person who (directly or indirectly) provided property to the trustees or has made a reciprocal arrangement for another to do so,
 - (ii) any person who is, by virtue of section 1059(2) or (3), an associate of a person within sub-paragraph (i), and
 - (iii) any person who is, or may become, beneficially entitled to a significant interest in the shares, and
 - (b) any such person is an associate of the trustees.
- (2) Subsection (1) does not apply to shares held on trusts which relate exclusively to a registered pension scheme.
- (3) Subsection (1) does not apply to shares held on trusts which—
- (a) are exclusively for the benefit of—

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- (i) the employees, or the employees and directors, of the company referred to in subsection (1) (or of companies in a group to which that company belongs), or
 - (ii) their dependants, and
 - (b) are not wholly or mainly for the benefit of directors or their relatives.
- (4) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the settled property, excluding any property in which the person is not and cannot become beneficially entitled to an interest.
- (5) In subsection (3) "group" means a company which has one or more 51% subsidiaries, together with those subsidiaries.

1061 Associated persons: personal representatives

- (1) If shares in a company are comprised in the estate of a person who has died then, in relation to the company—
- (a) 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
 - (b) any such person is an associate of the personal representatives.
- (2) For the purposes of subsection (1) a person's interest is significant if its value is greater than 5% of the value of all the property comprised in the estate concerned, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

1062 Connected persons

- (1) This section contains the rules for determining whether a person is connected with a company for the purposes of this Chapter.
- (2) A person is connected with a company if the person directly or indirectly possesses, or is entitled to acquire, more than 30% of—
- (a) the issued ordinary share capital of the company,
 - (b) the loan capital and the issued share capital of the company, or
 - (c) the voting power in the company.
- (3) If a person—
- (a) acquired, or became entitled to acquire, loan capital of a company in the ordinary course of a business which includes the lending of money, and
 - (b) takes no part in the management or conduct of the company,
- the person's interest in that loan capital is ignored for the purposes of subsection (2).
- (4) A person is connected with a company if the person (directly or indirectly)—
- (a) possesses, or
 - (b) is entitled to acquire,
- rights that would, in the event of a winding up or in any other circumstances, entitle the person to receive more than 30% of the assets of the company which would then be available for distribution to equity holders of the company.
- (5) For the purposes of subsection (4)—
- (a) "equity holder" is to be read in accordance with sections 158 to 164, and

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- (b) the percentage of the assets of a company to which a person would be entitled is to be determined in accordance with sections 166 and 167.
- (6) In section 166 as it applies for the purposes of subsection (4)—
- (a) references to company A are to be read as including a person who is not a company, and
 - (b) references to a winding up are to be read as including references to any other circumstances in which assets of a company are available for distribution to equity holders.
- (7) A person who has control of a company is connected with it.

1063 Section 1062: supplementary

- (1) References in section 1062 to the loan capital of a company are to any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
 - (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.
- (2) For the purposes of subsection (1)(c) the amount of the debt includes any premium on the debt.
- (3) For the purposes of section 1062 a person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
 - (b) will at a future date be entitled to acquire.
- (4) For the purposes of this section and section 1062 a person is assumed to have the rights and powers of the person's associates (as well as the person's own rights and powers).