



Corporation Tax Act 2010

2010 CHAPTER 4

PART 5

GROUP RELIEF

CHAPTER 6

EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

Modifications etc. (not altering text)

- C1** Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [ss. 241\(6\)](#), [381\(1\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- C2** Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [ss. 345\(7\)](#), [381\(1\)](#) (with [Sch. 9 paras. 1-9, 22, 31](#))
- C3** Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 252(10) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 252](#) (with [Sch. 2](#)))
- C4** Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 170(8) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 242\(4\)](#) (with [Sch. 2](#)))
- C5** Pt. 5 Ch. 6 applied (with modifications) by [Finance Act 2009 \(c. 4\)](#), s. 772(1)(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 646](#) (with [Sch. 2](#)))
- C6** Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [Sch. 7AC para. 8\(2\)](#) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 269\(3\)](#) (with [Sch. 2](#)))
- C7** Pt. 5 Ch. 6 applied by [Capital Allowances Act 2001 \(c. 2\)](#), [ss. 212G\(5\)](#), [212H\(2\)](#) (as inserted (with effect in accordance with [Sch. 4 para. 5, 6](#) of the amending Act) by [2010 c. 13](#), [Sch. 4 para. 2](#))
- C8** Pt. 5 Ch. 6 applied (with modifications) by [2007 c. 3](#), s. 257BF(3)(4) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 1](#))

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- C9** Pt. 5 applied (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 125](#) (with [s. 147](#), [Sch. 17](#))

Introduction

157 Introduction to Chapter

- (1) This Chapter applies for the purposes of sections 143(3)(b) and (c), 144(3)(b) and (c) and 151(4)(a) and (b).
- (2) For the purposes of this Chapter—
 - (a) “new consideration” has the meaning given by section 1115, and
 - (b) all loans are regarded as being securities.

Equity holders

158 Meaning of “equity holder”

- (1) An equity holder of a company (“the relevant company”) is any person who—
 - (a) holds ordinary shares in the company (see section 160), or
 - (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (see section 162).
- (2) For the purposes of subsection (1)(b) a person is a loan creditor of a company if the person is a creditor in respect of any redeemable loan capital issued by the company or in respect of a 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 (including any premium on the debt).
- (3) Subsection (1) is subject to section 159.

Modifications etc. (not altering text)

- C10** S. 158(1)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), [regs. 1\(1\)](#), [4](#) (with [reg. 8](#))

159 Use of relevant company's assets

- (1) Subsection (2) applies if—
 - (a) a person (“P”) has, directly or indirectly, provided new consideration for any shares or securities in the relevant company,
 - (b) assets of the relevant company are used by P for the purposes of a trade carried on by P or are used by a person connected with P for the purposes of a trade carried on by that connected person, and
 - (c) in respect of those assets an allowance within subsection (3) has been made to the relevant company.

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- (2) P (and no other person) is to be treated as being an equity holder in relation to the shares or securities mentioned in subsection (1)(a).
- (3) The allowances within this subsection are—
- (a) an annual investment allowance, within the meaning of Chapter 5 of Part 2 of CAA 2001, in relation to expenditure incurred by the relevant company on the provision of plant or machinery,
 - (b) a first-year allowance, within the meaning of that Chapter, in relation to expenditure so incurred,
 - (c) a writing-down allowance, within the meaning of that Chapter, in relation to expenditure so incurred, and
 - (d) an allowance under Chapter 3 of Part 6 of CAA 2001 in relation to expenditure incurred by the relevant company on research and development (within the meaning of that Part).
- (4) If—
- (a) P is a bank,
 - (b) the only new consideration provided by P is provided in the normal course of banking business by way of a normal commercial loan (see section 162), and
 - (c) the cost to the relevant company of the assets mentioned in subsection (1)(b) is less than the amount of the new consideration,
- the reference in subsection (2) to the shares or securities is to be read as a reference to only so much of that normal commercial loan as is equal to that cost of those assets.

Modifications etc. (not altering text)

C11 S. 159(4)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), 4 (with reg. 8)

160 Meaning of “ordinary shares”

- (1) For the purposes of section 158(1)(a) “ordinary shares” means shares other than restricted preference shares.
- (2) For the purposes of subsection (1) restricted preference shares are shares that meet each of conditions A to E.
- (3) Condition A is that the shares are issued for consideration which is or includes new consideration.
- (4) Condition B is that the shares do not carry any right to conversion into shares or securities other than a right to conversion into—
- (a) shares to which section 164(1) applies,
 - (b) securities to which section 164(2) applies, or
 - (c) shares or securities in the relevant company's quoted parent company (see section 164(3) to (7)).
- (5) Condition C is that the shares do not carry any right to the acquisition of shares or securities.
- (6) Condition D is that the shares—

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- (a) do not carry a right to dividends, or
 - (b) carry a restricted right to dividends (see section 161).
- (7) Condition E is that the shares, on repayment, do not carry rights to an amount exceeding the new consideration mentioned in subsection (3) except so far as those rights are reasonably comparable with those generally carried by fixed dividend shares listed on a recognised stock exchange.

Modifications etc. (not altering text)

- C12** S. 160 modified by 1988 c. 1, Sch. 25 para. 2(7A) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 147(2)(b)** (with [Sch. 2](#)))
- C13** S. 160 excluded (1.3.2013) by [The Building Societies \(Core Capital Deferred Shares\) Regulations 2013 \(S.I. 2013/460\)](#), regs. 1(1), **3(2)(c)** (with [reg. 1\(2\)](#))

161 Meaning of “restricted right to dividends”

- (1) For the purposes of condition D in section 160, a right to dividends carried by shares in a company is a “restricted right to dividends” if—
- (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the shares, and
 - (b) subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
- (a) the dividends are of a fixed amount or are at a fixed percentage rate of the nominal value of the shares, and
 - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
- (3) This subsection applies if—
- (a) the dividends are of a fluctuating percentage rate of the nominal value of the shares, and
 - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
- (4) This subsection applies if paragraph (a) of subsection (2) or (3) is met but paragraph (b) of that subsection is not met and—
- (a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in special circumstances, or
 - (b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in special circumstances.
- (5) For the purposes of subsection (3)(a) dividends are of a “fluctuating percentage rate” of the nominal value of shares if the rate fluctuates in accordance with—
- (a) a standard published rate of interest,
 - (b) the retail prices index, or
 - (c) any other general index of prices similar to the retail prices index that is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated.

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- (6) For the purposes of subsection (4) a company reduces the amount of, or does not pay, dividends “in special circumstances” if—
- (a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or
 - (b) the company does so for the purpose of following a recommendation of a relevant regulatory body.
- (7) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of subsection (6)(a).
- (8) In subsection (6)(b) “relevant regulatory body” means—
- [^{F1}(a) in relation to a dividend paid by a company that is a PRA-authorised person for the purposes of the FISMA, the Prudential Regulation Authority,
 - (aa) in relation to a dividend paid by a company that is authorised for the purposes of the FISMA but does not fall within paragraph (a), the Financial Conduct Authority, and]
 - (b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

Textual Amendments

- F1** S. 161(8)(a)(aa) substituted for s. 161(8)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 129\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

162 Meaning of “normal commercial loan”

- (1) For the purposes of sections 158(1)(b) and 159(4)(b) “normal commercial loan” means a loan—
- (a) which is of or includes new consideration, and
 - (b) in relation to which each of conditions A to D is met.

^{F2}(1A)

- (2) Condition A is that the loan does not carry any right to conversion into shares or securities other than a right to conversion into—
- (a) shares to which section 164(1) applies,
 - (b) securities to which section 164(2) applies, or
 - (c) shares or securities in [^{F3}a quoted unconnected company (see section 164(2A)) or in] the relevant company's quoted parent company (see section 164(3) to (7)).
- (3) Condition B is that the loan does not carry any right to the acquisition of shares or securities.
- (4) Condition C is that the loan does not entitle the loan creditor to any amount by way of interest which—
- (a) depends to any extent on the results of the relevant company's business or on the results of any part of that business,

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- (b) depends to any extent on the value of any of the relevant company's assets, or
- (c) exceeds a reasonable commercial return on the new consideration lent.

This subsection needs to be read with section 163.

- (5) Condition D is that the loan is a loan in relation to which the loan creditor is entitled, on repayment, to an amount which—
 - (a) does not exceed the new consideration lent, or
 - (b) is reasonably comparable with the amount generally repayable (in relation to an equal amount of new consideration) under the terms of issue of securities listed on a recognised stock exchange.

Textual Amendments

- F2** S. 162(1A) repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), **12(a)(i)**
- F3** Words in s. 162(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. **32(2)**

163 Normal commercial loans: company's results or value of assets

- (1) Interest is not within section 162(4)(a) by reason only that the terms of the loan provide for the rate of interest—
 - (a) to be reduced if the results of the relevant company's business or any part of the business improve, or
 - (b) to be increased if such results worsen.
- (2) Interest is not within section 162(4)(b) by reason only that the terms of the loan provide for the rate of interest—
 - (a) to be reduced if the value of any of the relevant company's assets increases, or
 - (b) to be increased if the value of any such assets decreases.
- (3) Subsection (4) applies if—
 - (a) a loan is made to the relevant company for the purpose of facilitating the acquisition of land,
 - (b) the loan is made on the basis mentioned in subsection (5), and
 - (c) none of the land that the loan is used to acquire is acquired with a view to resale at a profit.
- (4) Interest on the loan is not within section 162(4)(b) by reason only that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land that the loan is used to acquire.
- (5) The basis referred to in subsection (3)(b) is that—
 - (a) the whole of the loan is to be applied in the acquisition of land by the relevant company or in meeting incidental costs incurred wholly and exclusively for the purpose of obtaining the loan or providing security for the loan,
 - (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land that the loan is used to acquire, and
 - (c) no other security is to be required for the payment of any such amount.

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- (6) “Incidental costs” means expenditure on fees, commissions, advertising, printing or other incidental matters.

164 Sections 160 and 162: supplementary

- (1) This subsection applies to any shares—
- (a) in relation to which conditions A, C, D and E in section 160 are met, and
 - (b) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company's quoted parent company (see subsections (3) to (6)).
- (2) This subsection applies to any securities—
- (a) which represent a loan of or including new consideration,
 - (b) in relation to which conditions B, C and D in section 162 are met, and
 - (c) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in [^{F4}a quoted unconnected company (see subsection (2A)) or in] the relevant company's quoted parent company.

[^{F5}(2A) For the purposes of this section and section 162 a company is a quoted unconnected company if (and only if)—

- (a) its ordinary shares are listed on a recognised stock exchange, and
 - (b) it is not connected with the relevant company.]
- (3) For the purposes of this section and sections 160 and 162 a company (“the candidate company”) is the relevant company's quoted parent company if (and only if)—
- (a) the relevant company is a 75% subsidiary of the candidate company,
 - (b) the candidate company is not a 75% subsidiary of any company, and
 - (c) the candidate company's ordinary shares are listed on a recognised stock exchange.
- (4) [^{F6}In the case of a company whose] ordinary share capital is divided into two or more classes, [^{F7}subsections (2A)(a) and (3)(c) are] met only if its ordinary shares of each class are listed on a recognised stock exchange.
- (5) In [^{F8}this section] “ordinary shares” means shares forming part of ordinary share capital.
- (6) Subsection (7) applies if, in determining under subsection (3)(a) whether the relevant company is a 75% subsidiary of the candidate company, it is necessary to know, for the purposes of subsection (1)(b) or (2)(c) or section 160(4)(c) or 162(2)(c), whether the candidate company is the relevant company's quoted parent company.
- (7) It is to be assumed for those purposes that the candidate company is the relevant company's quoted parent company.

Textual Amendments

F4 Words in s. 164(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(3\)](#)

F5 S. 164(2A) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(4\)](#)

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- F6** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(a\)](#)
- F7** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(b\)](#)
- F8** Words in s. 164(5) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(6\)](#)

F9 164A Loan forming part of tier two capital

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Textual Amendments

- F9** S. 164A repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), **12(a)(ii)**

Company's entitlement to profits or assets available for distribution: basic provisions

165 Proportion of profits available for distribution to which company is entitled

- (1) This section applies for the purpose of determining the proportion to which a company (“company A”) is, at any time, beneficially entitled of any profits available for distribution to the equity holders of another company (“company B”).
- (2) The proportion is the proportion to which company A would, at that time, be beneficially entitled on a distribution in money to the equity holders of company B (“the profit distribution”) of—
 - (a) an amount of profits equal to company B's total profits of the relevant accounting period (see section 168), or
 - (b) if there are no such total profits, profits of £100.
- (3) It does not matter for the purposes of subsection (2) if any of company B's total profits are not actually distributed.
- (4) If company B is non-UK resident, company B's total profits are to be calculated as if it were UK resident.
- (5) For the purposes of the profit distribution, it is to be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.
- (6) Subject to subsection (5), if an equity holder is entitled as such to a payment which (apart from this subsection) would not be a distribution, the equity holder is nevertheless to be treated as entitled to the payment on the profit distribution.

166 Proportion of assets available for distribution to which company is entitled

- (1) This section applies for the purpose of determining the proportion to which a company (“company A”) would, at any time, be beneficially entitled of any assets available for distribution to the equity holders of another company (“company B”) on a winding up.

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- (2) The proportion is the proportion to which company A would, at that time, be beneficially entitled if company B were to be wound up and on that winding up (“the notional winding up”) the value of assets available for distribution to company B’s equity holders were equal to—
 - (a) the assets amount minus the liabilities amount, or
 - (b) if the assets amount does not exceed the liabilities amount or if company B’s balance sheet is prepared to a date other than the end of the relevant accounting period (see section 168), £100.
- (3) The “assets amount” is the amount of company B’s assets as shown in its balance sheet as at the end of the relevant accounting period.
- (4) The “liabilities amount” is the amount of company B’s liabilities as shown in that balance sheet but excluding liabilities to equity holders as such.
- (5) If, on the notional winding up, an equity holder would be entitled as such to an amount of assets which (apart from this subsection) would not be a distribution of assets, the equity holder is nevertheless treated as entitled to the amount on the distribution of assets on the notional winding up.
- (6) Subsection (7) applies if—
 - (a) an equity holder (“E”) of company B provided new consideration for any shares or securities in company B in relation to which E is an equity holder,
 - (b) company B makes a loan to E or any person connected with E or acquires shares or securities in E or any person so connected, and
 - (c) in making that loan or acquiring those shares or securities, company B applies, directly or indirectly, an amount (“the returned amount”) corresponding to the whole or any part of the new consideration.
- (7) The following amounts are to be reduced by the returned amount—
 - (a) the assets amount, and
 - (b) the amount of assets to which E is beneficially entitled on the notional winding up.

167 Profits or assets available for distribution and entitlement: supplementary

- (1) References to profits or assets available for distribution to equity holders of a company do not include references to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.
- (2) References to a company being beneficially entitled to profits or assets are references to the company being so entitled—
 - (a) directly,
 - (b) through another company or other companies, or
 - (c) partly directly and partly through another company or other companies.
- (3) If a person is an equity holder in relation to shares or securities as a result of section 159, that person (and no other) is to be treated as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

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168 Meaning of “the relevant accounting period”

- (1) For the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time, “the relevant accounting period” is the accounting period of company B in which that time falls.
- (2) If company B is non-UK resident and is not within the charge to corporation tax, the relevant accounting period is to be determined using the assumption in subsection (3).
- (3) The assumption is that company B became UK resident (and, therefore, within the charge to corporation tax) at the time it became a 75% subsidiary (as mentioned in section 136) ignoring section 151(4).

Company's entitlement to profits or assets available for distribution: supplementary

169 Application and interpretation of sections 170 to 182

- (1) Sections 170 to 182 apply for the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time.
- (2) In those sections—
 - “arrangements” means arrangements of any kind (whether or not in writing),
 - “company A's proportion” means the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at the relevant time,
 - “distribution rights” means rights in relation to dividends or interest or assets on a winding up,
 - “the participating equity holders”, in relation to the determining of company A's proportion, means the equity holders of company B—
 - (a) to whom the profit distribution would be made, or
 - (b) who would be entitled to participate in the notional winding up, and
 - “the relevant time” means the time mentioned in subsection (1) when the beneficial entitlement of company A is to be determined.

170 Shares or securities with limited rights

- (1) This section applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities with distribution rights that are limited (wholly or partly) by reference to a specified amount or amounts.
- (2) Determine what company A's proportion would be if all those distribution rights were waived so far as they are so limited.
 The result is referred to as “the alternative proportion”.
- (3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (4) Subsection (3) is subject to sections 175, 176, 178 and 180.

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- (5) For the purposes of subsection (1) a limitation on a right may operate—
 - (a) by specifying the capital or amount of profits by reference to which a distribution is calculated, or
 - (b) in any other way.
- (6) But in a case to which section 180 applies (see section 179), limitations that are covered by Case 1 in section 179 are ignored for the purposes of subsection (1).

171 Shares or securities with temporary rights

- (1) Section 172 applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities—
 - (a) which have rights within subsection (2), or
 - (b) in relation to which arrangements within subsection (3) are in place.
- (2) The rights within this subsection are distribution rights of such a kind that if—
 - (a) the profit distribution were to be made, or
 - (b) the notional winding up were to occur,at a time after the relevant accounting period, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.
- (3) The arrangements within this subsection are arrangements of such a kind that if—
 - (a) effect were to be given to the arrangements, and
 - (b) the profit distribution were to be made, or the notional winding up were to occur, at a time after the relevant accounting period,then, as a result of effect being given to the arrangements, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.
- (4) The references in subsections (2) and (3) to the equity holder's entitlement at a time are references to the proportion to which the equity holder would be beneficially entitled (as the case may be)—
 - (a) of profits on the profit distribution if it were made at that time, or
 - (b) of assets on the notional winding up if it occurred at that time.

172 Company A's proportion if shares etc have temporary rights

- (1) If this section applies, determine what company A's proportion would be if the rights of all participating equity holders at the relevant time were the same as what they would be at the relevant future time.

The result is referred to as “the alternative proportion”.
- (2) For the purposes of subsection (1)—
 - (a) “the relevant future time” means the time after the relevant accounting period mentioned in subsection (2) or (3) of section 171 (as the case may be), and
 - (b) assume that effect is given to all arrangements (if any) within subsection (3) of that section.
- (3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

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(4) Subsection (3) is subject to sections 175, 177, 178 and 180.

173 Cases in which option arrangements are in place

- (1) Section 174 applies if option arrangements are in place at the relevant time.
- (2) “Option arrangements” means arrangements in relation to which conditions A and B are met [^{F10}(but see sections 174A and 174B)].
- (3) Condition A is that the effect of the arrangements is that there could be a change in—
 - (a) the proportion of profits to which any of the participating equity holders would be beneficially entitled on the profit distribution if it were made at a time after the relevant time, or
 - (b) the proportion of assets to which any of the participating equity holders would be beneficially entitled on the notional winding up if it occurred at a time after the relevant time.
- (4) Condition B is that, under the arrangements, the change could result from the exercise of—
 - (a) a right to acquire ordinary shares in company B (see section 160) or securities in company B, or
 - (b) a right to require a person to acquire such shares or securities.
- (5) For the purposes of subsection (4)—
 - (a) it does not matter whether or not the shares or securities were issued before the arrangements were put in place,
 - (b) “right” does not include a right within subsection (6), and
 - (c) “securities” does not include normal commercial loans (as defined by section 162).
- (6) A right is within this subsection if it—
 - (a) is a right of an individual to acquire shares,
 - (b) was obtained because of the individual's office or employment as a director or employee of company B, and
 - (c) was obtained in accordance with a share option scheme at a time when the scheme was an approved share option scheme.
- (7) In subsection (6)(c)—

“share option scheme” means—

 - (a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), or
 - (b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of ITEPA 2003), and

“approved” means—

 - (a) in relation to an SAYE option scheme, approved under Schedule 3 to ITEPA 2003, and
 - (b) in relation to a CSOP scheme, approved under Schedule 4 to ITEPA 2003.

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Textual Amendments

- F10** Words in s. 173(2) inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(2)**

174 Company A's proportion if option arrangements in place

- (1) If this section applies, take the following steps.

Step 1

Identify all option rights under the option arrangements (or sets of arrangements if more than one) which exist at the relevant time but which have not become effective at or before that time. “Option rights” means rights of the kind mentioned in section 173(4)(a) or (b), and such a right becomes “effective” when the shares or securities to which it relates are acquired as a result of its exercise.

Step 2

Identify each possible state of affairs that could subsist at the relevant time if the option rights identified at Step 1, or any of them or any combination of them, became effective at that time. For this purpose it does not matter if an option right cannot actually become effective at or before the relevant time.

Step 3

Take each state of affairs identified at Step 2 and—

- (a) identify what the rights and duties of the participating equity holders would be at the relevant time if the state of affairs were to subsist at that time, and
- (b) determine what company A's proportion would be if those rights and duties were the rights and duties of the participating equity holders at the relevant time.

Step 4

Identify the lowest proportion determined under paragraph (b) of Step 3. That proportion is referred to as “the alternative proportion”.

- (2) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (3) Subsection (2) is subject to sections 176 to 178 and 180.

[^{F11}174A Certain option arrangements not within section 173

- (1) Arrangements entered into by a joint venture company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—
- (a) the arrangements are within subsection (2), and
 - (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.
- (2) Arrangements are within this subsection if they are—

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- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or
 - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member’s voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in subsections (1)(b) and (2) are—
- (a) the voluntary departure of a member,
 - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
 - (c) a serious deterioration in the financial condition of a member,
 - (d) a change of control of a member,
 - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
 - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
 - (g) an unresolved disagreement between members, and
 - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the option arrangements in question are entered into.
- (4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—
- (a) the transfer of shares or securities, or
 - (b) the suspension of a member’s voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this section—
- “connected” has the same meaning as in section 1122;
 - “constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
 - “joint venture company” means a company which—
 - (a) has two or more member companies, and
 - (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
 - “member” means a holder of shares or securities in the joint venture company.

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Textual Amendments

F11 Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(1)**

174B Certain mortgage arrangements not within section 173

- (1) Arrangements entered into by a company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—
 - (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
 - (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This section does not apply if the mortgagee—
 - (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
 - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.
- (3) For the purposes of subsection (2)(b) the mortgagee is not by reason only of the mortgage connected with a company whose shares or securities are the subject of the mortgage.
- (4) In this section—
 - “connected” has the same meaning as in section 1122;
 - “mortgage” means—
 - (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
 - (b) in Scotland, any right in security,
(and section 1166(1) (definition of “mortgage”: Scotland) does not apply).]

Textual Amendments

F11 Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(1)**

175 Cases in which both sections 170 and 172 apply

- (1) This section applies in a case in which sections 170 and 172 apply but section 174 does not.
- (2) Determine what company A's proportion would be—
 - (a) on the basis mentioned in section 170(2),
 - (b) on the basis mentioned in section 172(1),
 - (c) on those bases taken together, and
 - (d) ignoring sections 170 and 172.

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- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

176 Cases in which both sections 170 and 174 apply

- (1) This section applies in a case in which sections 170 and 174 apply but section 172 does not.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 170(2),
 - (b) on the basis mentioned at Step 4 in section 174,
 - (c) on those bases taken together, and
 - (d) ignoring sections 170 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

177 Cases in which both sections 172 and 174 apply

- (1) This section applies in a case in which sections 172 and 174 apply but section 170 does not.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 172(1),
 - (b) on the basis mentioned at Step 4 in section 174,
 - (c) on those bases taken together, and
 - (d) ignoring sections 172 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

178 Cases in which sections 170, 172 and 174 all apply

- (1) This section applies in a case in which sections 170, 172 and 174 all apply.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 170(2),
 - (b) on the basis mentioned in section 172(1),
 - (c) on the basis mentioned at Step 4 in section 174,
 - (d) on the bases mentioned in sections 170(2) and 172(1) taken together,
 - (e) on the bases mentioned in section 170(2) and at Step 4 in section 174 taken together,
 - (f) on the bases mentioned in section 172(1) and at Step 4 in section 174 taken together,
 - (g) on the bases mentioned in section 170(2), section 172(1) and at Step 4 in section 174 taken together, and
 - (h) ignoring sections 170, 172 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

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179 Cases in which surrendering or claimant company is non-UK resident

- (1) If the surrendering company or the claimant company is non-UK resident at the relevant time, section 180 applies as mentioned in subsections (2) and (3) in the cases set out in subsection (4).
- (2) Section 180 applies in the application of this Chapter for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) if the non-UK resident company is owned by the consortium at the relevant time.
- (3) Section 180 applies in the application of this Chapter for the purposes of section 151(4) (a) and (b) in determining if the non-UK resident company is a 75% or 90% subsidiary of another company at the relevant time.

But section 180 is not to be applied in determining if the EEA group condition is met (see section 136) at the relevant time.

- (4) The cases in which section 180 applies are as follows.

Case 1

One or more of the participating equity holders holds, as such, shares or securities with distribution rights that have effect (wholly or partly) by reference to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade (see section 182).

Case 2

Section 174 applies and any of the proportions to be determined under paragraph (b) of Step 3 in that section would differ according to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade.

180 Company A's proportion if non-UK resident involved

- (1) If this section applies—
 - (a) go to subsection (2) if the case is one in which none of sections 170, 172 and 174 applies, and
 - (b) go to subsection (3) if the case is one in which any of sections 170, 172, and 174 applies.
- (2) If the case is as mentioned in subsection (1)(a)—
 - (a) determine what company A's proportion would be using the assumptions set out in section 181, and
 - (b) if the proportion so determined (“the alternative proportion”) is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (3) If the case is as mentioned in subsection (1)(b), take the following steps.

Step 1

Determine, in each way required by the applicable sections, what company A's proportion would be ignoring this section. A proportion determined at this step is referred to as a “normal proportion”.

Step 2

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Determine, in each way required by the applicable sections, what company A's proportion would be using the assumptions set out in section 181. A proportion determined at this step is referred to as a “section 181 proportion”.

Step 3

If a section 181 proportion determined in a required way is less than the normal proportion determined in that way, for the purposes of the applicable sections use the section 181 proportion instead of the normal proportion.

- (4) In subsection (3) “the applicable sections” means any of sections 170, 172 and 174 that applies in the case mentioned in subsection (1)(b), together with whichever (if any) of sections 175 to 178 that applies in that case.

181 Assumptions to be applied if non-UK resident company involved

- (1) The assumptions referred to in section 180 are as follows.

Assumption 1

The profit distribution or the distribution on the notional winding up is confined to a distribution of the profits or assets referable to company B's UK trade (see section 182).

Assumption 2

Section 165(2) (in the case of a profit distribution) is applied on the basis that the amount of company B's total profits referred to in that subsection does not exceed the amount of those profits referable to its UK trade.

Assumption 3

Section 166(3) and (4) (in the case of a distribution on a notional winding up) is applied on the basis that the amount of company B's assets and liabilities referred to in those subsections does not exceed the amount of those assets and liabilities referable to its UK trade.

Assumption 4

None of the ordinary equity holders has a beneficial entitlement to the profits or assets referable to company B's UK trade that is greater than the proportion of the distribution in question to which the equity holder would be beneficially entitled—

- (a) if Assumptions 1 to 3 were ignored, and
- (b) if it would otherwise be less, the distribution were £100.

- (2) In subsection (1) “ordinary equity holder” means an equity holder whose beneficial entitlement on the profit distribution or the distribution on the notional winding up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to company B's UK trade.

182 Assets etc referable to UK trade

Profits, assets or liabilities of company B are referable to company B's UK trade so far as they—

- (a) are attributable to, or used for the purposes of, activities the income or chargeable gains from which are or (if there were any) would be brought into account in calculating company B's total profits of any accounting period, and

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- (b) are not attributable to, or used for the purposes of, activities which are double taxation exempt for any accounting period (see section 186).

Status:

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