



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 5

#### GROUP RELIEF

### CHAPTER 6

#### EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

*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.

*Status: Point in time view as at 17/07/2014.*

*Changes to legislation: Corporation Tax Act 2010, Cross Heading: Company's entitlement to profits or assets available for distribution: basic provisions is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

**Modifications etc. (not altering text)**

- C1** Pt. 5 Ch. 6 applied by 1992 c. 12, s. 236T(2) (as inserted (with effect in accordance with Sch. 37 paras. 2, 3 of the amending Act) by Finance Act 2014 (c. 26), Sch. 37 para. 1)
- C2** Pt. 5 Ch. 6 applied by 2007 c. 3, s. 257MV(8) (as inserted (17.7.2014) by Finance Act 2014 (c. 26), Sch. 11 para. 1)
- C3** Pt. 5 Ch. 6 applied by 2010 c. 8, s. 345(7)-(10) (as substituted (with effect in accordance with s. 39(4) of the amending Act) by Finance Act 2014 (c. 26), s. 39(2))

**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.
- (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—
- the assets amount minus the liabilities amount, or
  - 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—
- 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,
  - 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
  - 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—
- the assets amount, and
  - the amount of assets to which E is beneficially entitled on the notional winding up.

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**Modifications etc. (not altering text)**

- C4 S. 166 modified by 2007 c. 3, s. 257MV(9) (as inserted (17.7.2014) by Finance Act 2014 (c. 26), Sch. 11 para. 1)

**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.

**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).

**Status:**

Point in time view as at 17/07/2014.

**Changes to legislation:**

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