

CHAPTER 2 Meaning of distribution

Matters to be treated as distributions. CTA76 s84 130.—(1) The following provisions of this Chapter, together with sections 436 and 437, shall, subject to any express exceptions, apply with respect to the meaning in the Corporation Tax Acts of “distribution” and for determining the persons to whom certain distributions are to be treated as made; but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.

(2) In relation to any company, “distribution” means—

(a) any dividend paid by the company, including a capital dividend;

(b) any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except, subject to section 132, so much of the distribution, if any, as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

(c) any amount met out of assets of the company (whether in cash or otherwise) in respect of the redemption of any security issued by the company in respect of shares in, or securities of, the company otherwise than wholly for new consideration, or in the redemption of such part of any such security so issued as is not properly referable to new consideration;

(d) any interest or other distribution out of assets of the company in respect of securities of the company (9), for this purpose no amount shall be regarded as representing the principal secured by a security in so far as it exceeds any new consideration received by the company for the issue of the security), where the securities are—

(i) securities issued as mentioned in paragraph (c), but excluding securities issued before the 27th day of November, 1975,

(ii) securities convertible directly or indirectly into shares in the company or securities carrying any right to receive shares in or securities of the company, not being (in either case) securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted,

(iii) securities under which—

(I) the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of the company's business, or

(II) the consideration so given represents more than a reasonable commercial return for the use of that principal; but this shall not operate so as to treat as a distribution so much of the interest or other distribution as represents a reasonable commercial return for the use of that principal,

(iv) securities issued by the company and held by a company not resident in the State, where—

(I) the company which issued the securities is a 75 per cent subsidiary of the other company,

(II) both companies are 75 per cent subsidiaries of a third company which is not resident in the State,
or

(III) except where 90 per cent or more of the share capital of the company which issued the securities is directly owned by a company resident in the State, both the company which issued the securities and the company not resident in the State are 75 per cent subsidiaries of a third company which is resident in the State,

or

(v) securities connected with shares in the company, where “connected with” means that, in consequence of the nature of the rights attaching to the securities or shares, and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or acquire, a proportionate holding of the shares;

(e) any amount required to be treated as a distribution by subsection (3) or by section 131.

(3) (a) Where on a transfer of assets or liabilities by a company to its members or to a company by its members the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by the member, the company shall be treated as making a distribution to the member of an amount equal to the difference (in paragraph (b) referred to as “the relevant amount”).

(b) Notwithstanding paragraph (a), where the company and the member receiving the benefit are both resident in the State and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident, the relevant amount shall not be treated as a distribution.

(4) The question whether one company is a subsidiary of another company for the purpose of subsection (3) shall be determined as a question whether it is a 51 per cent subsidiary of that other company, except that that other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a company, if a profit on a sale of the shares would be treated as a trading receipt of its trade,

(b) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt, or

(c) any share capital which it owns directly or indirectly in a company not resident in the State.

(5) (a) No transfer of assets (other than cash) or of liabilities between one company and another

company shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (3) if they are companies—

(i) both of which are resident in the State and neither of which is a 51 per cent subsidiary of a company not so resident, and

(ii) which neither at the time of the transfer nor as a result of it are under common control.

(b) For the purposes of this subsection, 2 companies shall be under common control if they are under the control of the same person or persons, and for this purpose “control” shall be construed in accordance with section 11.

(c) Any amount which would be a distribution by virtue of subsection (3)(a) shall not constitute a distribution by virtue of subsection (2)(b).