

CHAPTER 2 Additional matters to be treated as distributions, charges to tax in respect of certain loans and surcharges on certain undistributed income

Certain expenses for participators and associates. CTA76 s96 436.—(1) Subject to the exceptions mentioned in section 130, “distribution”, in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by subsection (3).

(2) For the purposes of this section, any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

(3) (a) Subject to paragraph (b), where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature, the company shall be treated as making a distribution to such participator of an amount equal to so much of that expense as is not made good to the company by such participator.

(b) Paragraph (a) shall not apply to expense incurred in or in connection with the provision of benefits or facilities for a person to whom section 118 applies as a director or employee of the company, or the provision for the spouse, children or dependants of any such person of any pension, annuity, lump sum, gratuity or other like benefit to be given on his or her death or retirement.

(4) Any reference in subsection (3) to expense incurred in or in connection with any matter shall include a reference to a proper proportion of any expense incurred partly in or in connection with that matter, and section 119 shall apply for the purposes of subsection (3) as it applies for the purposes of section 118, references to subsection (3) being substituted for references to section 118 (1).

(5) Subsection (3) shall not apply if the company and the participator are both resident in the State and—

(a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and

(b) the benefit to the participator arises on or in connection with the transfer of assets or liabilities by the company to the participator, or to the company by the participator.

(6) The question whether one company is a subsidiary of another company for the purpose of subsection (5) shall be determined as if it were a question whether it is a 51 per cent subsidiary of the other company, except that the 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.

(7) (a) Where each of 2 or more close companies makes a payment to a person (in this paragraph referred to as “the first-mentioned person”) who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then, each of those companies and any participator in it shall be treated as if the payment made to the first-mentioned person had been made by that company.

(b) This subsection shall apply with any necessary modifications in relation to the giving of any consideration and to the provision of any facilities as it applies in relation to the making of a payment.