

CHAPTER 2 Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits

Purchases of shares by financial concerns and persons exempted from tax. ITA67 s371; F(MP)A68 s3(2) and Sch Ptl; CTA76 s140(1), s164, Sch2 Pt1 par20 and Sch3 Ptl 752.—(1) For the purposes of this Chapter and Schedule 22—

(a) references to a dividend shall, except where the context otherwise requires, be construed as including references to a distribution, and to an amount which under any enactment is to be treated as a distribution, made on or after the 6th day of April, 1976,

(b) in relation to such a distribution, including an amount to be so treated as a distribution, references to a dividend being paid or becoming payable or being received or becoming receivable on shares shall be construed as references to a distribution or an amount to be so treated as a distribution being made or received in respect of shares or securities, and

(c) in applying references to a dividend in relation to a distribution, “gross amount” or “gross dividend” means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and “net amount” or “net dividend” means the distribution exclusive of any such tax credit,

and in this subsection “distribution” has the same meaning as in the Corporation Tax Acts.

(2) (a) In this section and in Schedule 22—

“company” includes any body corporate, but does not include a company not resident in the State;

“control”, in relation to a body corporate, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership;

“person” includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

“share” includes stock other than debenture or loan stock;

“shares of a class to which this section applies” means shares of any class forming part of a company's share capital, other than a class of fully-paid preference shares carrying only a right to dividends at a rate per cent of the nominal value of the shares which is fixed and which in the opinion of the Appeal Commissioners does not substantially exceed the yield generally obtainable on preference shares the prices of which are quoted on stock exchanges in the State.

(b) For the purposes of this section and Schedule 22—

(i) shares shall be regarded as of different classes if the rights and obligations respectively attached to them are distinguishable as regards the payment of dividends or the amount paid up or in any other respect;

(ii) any reference to shares acquired in right of other shares includes a reference to shares acquired in pursuance of an offer or invitation which was restricted to holders of those other shares;

(iii) 2 trades shall be regarded as under the same control if they are carried on by persons one of whom is a body of persons over whom the other has control or both of whom are bodies of persons under the control of a third person, and several trades shall be regarded as under the same control if each is under the same control as all of the others, and in this subparagraph “body of persons” includes a partnership.

(3) Where a person engaged in carrying on a trade which consists of or comprises dealings in shares or other investments becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

(a) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable,

(b) in a case where the trade is under the same control as another trade which consists of or comprises dealings in shares or other investments, any shares the dividend on which is payable to the person engaged in carrying on that other trade and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and

(c) any shares to be taken into account under subsection (5),

amount to 10 per cent or more of the issued shares of that class, the net amount of the dividend received on the shares in the holding shall, to the extent to which it was paid out of profits accumulated before the shares were acquired, be taken into account in computing for the purposes of the Tax Acts the profits or gains or losses of the trade as if it were a trading receipt which had not borne tax.

(4) Where a person entitled under the Tax Acts to an exemption from tax which extends to dividends on shares becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of the profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

(a) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and

(b) any shares to be taken into account under subsection (5),

amount to 10 per cent or more of the issued shares of that class, the exemption shall, to an extent proportionate to the extent to which the dividend is paid out of profits accumulated before the date on which the shares were acquired, not apply to the dividend; but, if any annual payment is payable by that person out of the dividend, that annual payment shall be deemed as to the whole of that payment—

(i) to be paid out of profits or gains not brought into charge to tax and section 238 shall apply accordingly, and

(ii) for the purposes of corporation tax, not to be a payment which is a charge on income.

(5) Where 2 or more persons, being persons engaged in carrying on trades of the kind mentioned in subsection (3) or entitled to an exemption of the kind mentioned in subsection (4), have each acquired shares in a company and the transactions in pursuance of which the acquisition was made were either transactions entered into by those persons acting in concert or transactions together comprised in any arrangements made by any person, then, in the application of either of those subsections in relation to a dividend payable to one of those persons on shares which include shares so acquired (or shares acquired in right of those shares), there shall be taken into account under subsection (3) (c) or, as the case may be, subsection (4) (b) any shares the dividend on which is payable to any other of those persons, being shares so acquired by that other person (or shares acquired in right of those shares).

(6) Where any shares have been sold or otherwise disposed of by a person who held shares of that kind acquired at different times, it shall be assumed for the purposes of this section that shares which have been held for a longer time have been disposed of before shares which have been held for a shorter time.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any shares form part of the trading stock belonging to the trade, those shares shall be regarded for the purposes of this section as having been acquired at that time by the person then engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged after the change as if anything done to or by that person's predecessor had been done to or by that person.

(8) Schedule 22 shall apply for the purpose of ascertaining whether a dividend is to be regarded as paid

to any extent out of profits accumulated before a particular date.