

Distributions: supplemental. CTA76 s87; FA91 s29 135.—(1) (a) In this Chapter, “new consideration” means consideration not provided directly or indirectly out of the assets of the company, but does not include amounts retained by the company by means of capitalising a distribution.

(b) Notwithstanding paragraph (a), where share capital has been issued at a premium representing new consideration, any part of that premium applied afterwards in paying up share capital shall also be treated as new consideration for that share capital, except in so far as the premium has been taken into account under section 132 (3) so as to enable a distribution to be treated as a repayment of share capital.

(2) (a) No consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Chapter as new consideration received by the company unless the consideration consists of—

(i) money or value received from the company as a distribution,

(ii) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by that security, or

(iii) the giving up of the right to that share capital or security on its cancellation, extinguishment or acquisition by the company.

(b) No amount shall be regarded as new consideration by virtue of subparagraph (ii) or (iii) of paragraph (a) in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a distribution on issue, the nominal value of that share capital.

(3) Where 2 or more companies enter into arrangements to make distributions to each other's members, all parties concerned may for the purposes of this Chapter be treated as if anything done by any of those companies had been done by any other, and this subsection shall apply however many companies participate in the arrangements.

(4) (a) In this Chapter and in section 137, “in respect of shares in the company” and “in respect of securities of the company”, in relation to a company which is a member of a 90 per cent group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.

(b) Without prejudice to section 130 (2)(b) as extended by paragraph (a), in relation to a company which is a member of a 90 per cent group, “distribution” includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

(c) Nothing in this subsection shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the State.

(d) For the purposes of this subsection, a principal company and all its 90 per cent subsidiaries form a 90 per cent group, and "principal company" means a company of which another company is a subsidiary.

(e) Nothing in this subsection shall require any company which is a subsidiary of the Companies Act, 1963 ) of another company to be treated as making a distribution where it acquires shares in the other company in accordance with section 9 (1) of the Insurance Act, 1990 .

(5) A distribution shall be treated under this Chapter as made, or consideration as provided, out of assets of a company if the cost falls on the company.

(6) In this Chapter and in section 137, "share" includes stock and any other interest of a member in a company.

(7) References in this Chapter to issuing share capital as paid up apply also to the paying up of any issued share capital.

(8) For the purposes of this Chapter and of section 137, "security" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

(9) Where securities are issued at a price less than the amount repayable on them and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Chapter to exceed the issue price unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.

(10) For the purposes of this Chapter and of section 137, a thing shall be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder of the share, or is done in pursuance of a right granted or offer made in respect of a share, and anything done in respect of shares by reference to share holdings at a particular time shall be regarded as done to the then holder of the shares or the personal representatives of any shareholder then dead.

(11) Subsection (10) shall apply in relation to securities as it applies in relation to shares.