

Meaning of “participator”, “associate”, “director” and “loan creditor”. CTA76 s103; FA97 s146(1) and Sch9 Ptl par10(5) 433.—(1) For the purposes of this Part, “participator”, in relation to any company, means a person having a share or interest in the capital or income of the company and, without prejudice to the generality of the foregoing, includes—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,

(b) any loan creditor of the company,

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or 437) or any amounts payable by the company (in cash or in kind) to loan creditors by means of premium on redemption, and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for such person's benefit.

(2) (a) References in subsection (1) to being entitled to do anything apply where a person is entitled to do it at a future date or will at a future date be entitled to do it.

(b) Subsection (1) is without prejudice to any particular provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

(3) (a) In this subsection, “relative” means husband, wife, ancestor, lineal descendant, brother or sister.

(b) For the purposes of this Part but subject to paragraph (c), “associate”, in relation to a participator, means—

(i) any relative or partner of the participator,

(ii) the trustee or trustees of any settlement in relation to which the participator is, or any relative (living or dead) of the participator is or was, a settlor ), and

(iii) where the participator is interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, any other person interested in those shares or obligations,

and has a corresponding meaning in relation to a person other than a participator.

(c) Paragraph (b)(iii) shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

(i) if the trust relates exclusively to an exempt approved scheme of Part 30), or

(ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of the directors or their relatives) and the individual in question is not (and could not as a result of the operation of the trust become), either on his or her own or with his or her relatives, the beneficial owner of more than 5 per cent of the ordinary share capital of the company,

and, in applying subparagraph (ii), any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

(4) For the purposes of this Part, “director” includes any person—

(a) occupying the position of director by whatever name called,

(b) in accordance with whose directions or instructions the directors are accustomed to act,

(c) who is a manager of the company or otherwise concerned in the management of the company's trade or business, and

(d) who is, either on his or her own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, 20 per cent or more of the ordinary share capital of the company.

(5) In subsection (4)(d), “either on his or her own or with one or more associates” requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he or she does not own or control share capital on his or her own and, in subsection (3)(c)(ii), “either on his or her own or with his or her relatives” has a corresponding meaning.

(6) (a) For the purposes of this Part but subject to paragraph (b), “loan creditor”, in relation to a company, means a creditor in respect of—

(i) any debt incurred by the company for—

(I) any money borrowed or capital assets acquired by the company,

(II) any right to receive income created in favour of the company, or

(III) consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on the debt),

or

(ii) any redeemable loan capital issued by the company.

(b) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital issued or debt incurred by the company for money loaned by such person to the company in the

ordinary course of that business.

(7) A person who is not the creditor in respect of any debt or loan capital to which subsection (6) applies but nevertheless has a beneficial interest in that debt or loan capital shall to the extent of that interest be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.