

## SCHEDULES

### SCHEDULE 12

Section 38

#### TRANSACTIONS IN SECURITIES

##### *Income tax*

- 1 Chapter 1 of Part 13 of ITA 2007 (transactions in securities: income tax advantages) is amended as follows.
- 2 For sections 682 to 694 substitute—

##### *“Introduction*

#### **682 Overview of Chapter**

This Chapter makes provision for counteracting income tax advantages from transactions in securities.

#### **683 Provisions of Chapter**

- (1) Sections 684 to 687 specify when a person is liable to counteraction of income tax advantages from transactions in securities.
- (2) Sections 695 to 700 make provision about the procedure for counteraction of such income tax advantages.
- (3) Sections 701 and 702 make provision for a clearance procedure.
- (4) Section 705 makes provision for appeals against counteraction notices.
- (5) Sections 712 deals with cases in which a person liable to counteraction dies.
- (6) Section 713 contains interpretative provisions.

##### *Person liable to counteraction of income tax advantages*

#### **684 Person liable to counteraction of income tax advantage**

- (1) This section applies to a person where—
  - (a) the person is a party to a transaction in securities or two or more transactions in securities (see subsection (2)),
  - (b) the circumstances are covered by section 685 and not excluded by section 686,
  - (c) the main purpose, or one of the main purposes, of the person in being a party to the transaction in securities, or any of the transactions in securities, is to obtain an income tax advantage, and

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- (d) the person obtains an income tax advantage in consequence of the transaction or the combined effect of the transactions.
- (2) In this Chapter “transaction in securities” means a transaction, of whatever description, relating to securities, and includes in particular—
  - (a) the purchase, sale or exchange of securities,
  - (b) issuing or securing the issue of new securities,
  - (c) applying or subscribing for new securities, and
  - (d) altering or securing the alteration of the rights attached to securities.
- (3) Section 687 defines “income tax advantage”.
- (4) This section is subject to—
  - section 696(3) (disapplication of this section where person receiving preliminary notification that section 684 may apply makes statutory declaration and relevant officer of Revenue and Customs sees no reason to take further action), and
  - section 697(5) (determination by tribunal that there is no prima facie case that section 684 applies).

**685 Receipt of consideration in connection with distribution by or assets of close company**

- (1) The circumstances covered by this section are circumstances where condition A or condition B is met.
- (2) Condition A is that, as a result of the transaction in securities or any one or more of the transactions in securities, the person receives relevant consideration in connection with—
  - (a) the distribution, transfer or realisation of assets of a close company,
  - (b) the application of assets of a close company in discharge of liabilities, or
  - (c) the direct or indirect transfer of assets of one close company to another close company,
 and does not pay or bear income tax on the consideration (apart from this Chapter).
- (3) Condition B is that—
  - (a) the person receives relevant consideration in connection with the transaction in securities or any one or more of the transactions in securities,
  - (b) two or more close companies are concerned in the transaction or transactions in securities concerned, and
  - (c) the person does not pay or bear income tax on the consideration (apart from this Chapter).
- (4) In a case within subsection (2)(a) or (b) “relevant consideration” means consideration which—
  - (a) is or represents the value of—
    - (i) assets which are available for distribution by way of dividend by the company, or

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- (ii) assets which would have been so available apart from anything done by the company,
  - (b) is received in respect of future receipts of the company, or
  - (c) is or represents the value of trading stock of the company.
- (5) In a case within subsection (2)(c) or (3) “relevant consideration” means consideration which consists of any share capital or any security issued by a close company and which is or represents the value of assets which—
  - (a) are available for distribution by way of dividend by the company,
  - (b) would have been so available apart from anything done by the company, or
  - (c) are trading stock of the company.
- (6) The references in subsection (2)(a) and (b) to assets do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (7) So far as subsection (2)(c) or (3) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (on a winding up or otherwise); and for this purpose any distribution made in respect of any shares on a winding up or dissolution of the company is to be treated as a repayment of share capital.
- (8) References in this section to the receipt of consideration include references to the receipt of any money or money’s worth.
- (9) In this section—
  - “security” includes securities not creating or evidencing a charge on assets;
  - “share” includes stock and any other interest of a member in a company.

### **686 Excluded circumstances: fundamental change of ownership**

- (1) Circumstances are excluded by this section if—
  - (a) immediately before the transaction in securities (or the first of the transactions in securities) the person (referred to in this section as “the party”) holds shares or an interest in shares in the close company, and
  - (b) there is a fundamental change of ownership of the close company.
- (2) There is a fundamental change of ownership of the close company if—
  - (a) as a result of the transaction or transactions in securities, conditions A, B and C are met, and
  - (b) those conditions continue to be met for a period of 2 years.
- (3) Condition A is that at least 75% of the ordinary share capital of the close company is held beneficially by—
  - (a) a person who is not connected with the party and has not been so connected within the period of 2 years ending with the day on

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which the transaction in securities (or the first of the transactions in securities) takes place, or

- (b) persons none of whom is so connected or has been so connected within that period.
- (4) Condition B is that shares in the close company held by that person or those persons carry an entitlement to at least 75% of the distributions which may be made by the company.
- (5) Condition C is that shares so held carry at least 75% of the total voting rights in the close company.

### **687 Income tax advantage**

- (1) For the purposes of this Chapter the person obtains an income tax advantage if—
- (a) the amount of any income tax which would be payable by the person in respect of the relevant consideration if it constituted a qualifying distribution exceeds the amount of any capital gains tax payable in respect of it, or
  - (b) income tax would be payable by the person in respect of the relevant consideration if it constituted a qualifying distribution and no capital gains tax is payable in respect of it.
- (2) So much of the relevant consideration as exceeds the maximum amount that could in any circumstances have been paid to the person by way of a qualifying distribution at the time when the relevant consideration is received is to be left out of account for the purposes of subsection (1).
- (3) The amount of the income tax advantage is the amount of the excess or (if no capital gains tax is payable) the amount of the income tax which would be payable.
- (4) In this section “relevant consideration” has the same meaning as in section 685.”

3 In section 698(6) (counteraction notices), omit—

- (a) the entry relating to section 699, and
- (b) in the entry relating to section 700, “in section 690 cases”.

4 Omit section 699 (limit on amount assessed in section 689 and 690 cases).

5 In section 700 (timing of assessments in section 690 cases)—

- (a) in subsection (1), for “690 (receipt of relevant company assets (circumstance E))” substitute “685(2)(c) or (3)”, and
- (b) in the heading, omit “**in section 690 cases**”.

6 In the heading before section 701, omit “and information powers”.

7 (1) Section 713 (interpretation) is amended as follows.

(2) Before the definition of “company” insert—

““close company” includes a company that would be a close company if it were resident in the United Kingdom.”.

(3) Omit the definition of “transaction in securities”.

### *Corporation tax*

- 8 Part 15 of CTA 2010 (transactions in securities: corporation tax advantages) is amended as follows.
- 9 In section 733(2) (company liable to counteraction of corporation tax advantage), omit the entry relating to section 735.
- 10 Omit section 735 (abnormal dividends used for exemptions or reliefs).

### *Consequential amendments*

- 11 In section 809S of ITA 2007 (remittance basis: anti-avoidance provisions relating to transfers of mixed funds), for subsection (4) substitute—
- “(4) Income tax advantage” means—
- (a) a relief from income tax or increased relief from income tax,
- (b) a repayment of income tax or increased repayment of income tax,
- (c) the avoidance or reduction of a charge to income tax or an assessment to income tax, or
- (d) the avoidance of a possible assessment to income tax;
- and for this purpose “relief from income tax” includes a tax credit.
- (4A) For the purposes of subsection (4)(c) and (d) it does not matter whether the avoidance or reduction is effected—
- (a) by receipts accruing in such a way that the recipient does not pay or bear income tax on them, or
- (b) by a deduction in calculating profits or gains.”
- 12 (1) Schedule 4 to that Act (index of defined expressions) is amended as follows.
- (2) After the definition of “close company” insert—
- “close company (in Chapter 1 of Part 13) | section 713”.
- (3) In the entry relating to “income tax advantage (in Chapter 1 of Part 13)”, for “683(1)” substitute “687”.
- (4) In the entry relating to “transaction in securities (in Chapter 1 of Part 13)”, for “713” substitute “684(2)”.
- 13 In FA 2007, in Schedule 26, omit paragraph 12(11).
- 14 In CTA 2010, in Schedule 1, omit paragraphs 545 and 546.

### *Commencement*

- 15 (1) The amendments made by paragraphs 2 to 5, 7 and 11 to 13 (and paragraph 1 so far as relating to them) have effect in relation to income tax advantages obtained on or after 24 March 2010.
- (2) The amendment made by paragraph 6 (and paragraph 1 so far as relating to it) are treated as having come into force on 1 April 2009.
- (3) The amendments made by paragraphs 8 to 10 have effect in relation to corporation tax advantages obtained on or after 1 April 2010.

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- (4) The repeals made by paragraph 14 are treated as having come into force on 1 April 2010.