

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 10: Close companies

Chapter 2: Basic definitions

Overview

1327. This Chapter defines which companies are and are not to be close companies. It has the following structure.
- Sections 439 to 441 define “close company”.
 - Sections 442 to 447 make exceptions to the rules in sections 439 to 441.
 - Sections 448 to 454 define some expressions used in this Part and, in particular, in defining “close company”. These definitions are arranged in alphabetical order.

Section 439: “Close company”

1328. This section is the first of a group of three sections defining “close company”. It is based on section 414(1), (2) and (2D) of ICTA.
1329. *Subsection (1)* provides that there are two alternative tests to determine whether a company is a close company.
1330. The first test, condition A in *subsection (2)*, focuses on control over the company.
1331. The second test, condition B in *subsection (3)*, focuses on rights to assets in the event that the company is wound up.
1332. *Subsection (4)* gives a signpost to the exceptions to this section in sections 442 to 447.
1333. *Subsections (5) and (6)* relate to condition B in subsection (3). Subsection (5) provides for subsection (3) to be supplemented by section 451. Subsection (6) gives a signpost to section 441, which supplements subsection (3).
1334. “Control” and “director” are used for the first time in this Part in subsection (2), and “loan creditor” is used for the first time in subsection (3). Signposts to their definitions are given in *subsection (7)*.

Section 440: Basis of winding up under section 439(3)

1335. This section quantifies the part of the assets available for distribution among the participators which a person is entitled to receive in the notional winding up under section 439(3). It is based on section 414(2A) and (2B) of ICTA.

Section 441: Treatment of some persons as participators or directors for the purposes of section 439(3)

1336. This section supplements section 439(3). It is based on section 414(2C) of ICTA.

Section 442: Particular types of company

1337. This section is the first of a series of sections stipulating that certain companies are not to be treated as close companies. It is based on section 414(1) and (2) of ICTA.

Section 443: Companies controlled by or on behalf of Crown

1338. This section provides that certain companies controlled by or on behalf of the Crown are not to be treated as close companies. It is based on section 414(1) and (4) of ICTA.

1339. *Subsection (1)* provides that “a company is not to be treated as a close company *as a result of section 439(2)* if it is controlled by or on behalf of the Crown.” The italicised words are based on “and not otherwise a close company” in section 414(1)(c) of ICTA.

1340. The italicised words leave it open for a company controlled by or on behalf of the Crown to be a close company if condition B in section 439(3) is met. Section 439(3) is based on section 414(2) of ICTA.

1341. The italicised words also leave it open for a company controlled by or on behalf of the Crown to be a close company if condition A in section 439(2) is satisfied by reference to persons acting independently of the Crown. See *subsection (3)*.

1342. In short, section 414(1)(c) of ICTA is a qualified exception to section 414(1) of that Act but not an exception to section 414(2) of that Act.

Section 444: Companies involved with non-close companies

1343. This section provides that certain companies involved with non-close companies are not to be treated as close companies. It is based on section 414(5) and (6) of ICTA.

1344. *Subsections (2)* and *(3)* rewrite section 414(5)(a) and (b) of ICTA respectively.

Section 445: Section 444: registered pension schemes

1345. This section supplements section 444; it is concerned with shares held on trust for registered pension schemes. It is based on section 414(7) of ICTA.

1346. *Subsection (1)* is based on the full-out words at the beginning and end of section 414(7) of ICTA. In summary, a registered pension scheme within subsection (1) is treated as a non-close company.

1347. *Subsection (2)* is based on the “unless”-clause in the full-out words at the beginning of section 414(7) of ICTA. It is the first part of an exception to subsection (1). It focuses on the individuals for whose benefit the scheme is established.

1348. *Subsection (3)* is based on section 414(7)(a) to (c) of ICTA. It is the second part of the exception to subsection (1). It focuses on the companies of which the individuals in subsection (2)(a) are or were directors or employees.

1349. “Associate” and “associated company” appear for the first time in subsection (3). Their definitions are signposted in *subsection (4)*.

Section 446: Particular types of quoted company

1350. This section provides that certain quoted companies are not to be treated as close companies. It is based on section 415(1), (2) and (6) to (8) of ICTA.

1351. *Subsection (1)* lays down the general rule.

1352. *Subsection (2)* makes an exception to the general rule in *subsection (1)*.
1353. *Subsection (2)* uses the concept of a “principal member” of a company. This term is defined in *subsection (3)*.
1354. *Subsection (4)* qualifies *subsection (3)*.
1355. *Subsections (1) to (4)* focus on voting power. *Subsection (5)* supplements the references to voting power in those provisions.

Section 447: Section 446: meaning of “shares beneficially held by the public” etc

1356. This interpretative section is based on section 415(3) to (8) of ICTA.
1357. *Subsection (1)* lays down the general rule.
1358. *Subsection (2)* makes an exception to that rule.
1359. *Subsection (3)* specifies the individuals in *subsection (2)(e)*.
1360. *Subsection (4)* rewrites the tail words of section 415(3) of ICTA. It supplements the references to unconditional allotment and unconditional acquisition in section 446(1).
1361. *Subsections (5) to (8)* supplement this section or provisions of this section.

Sections 448 and 449: “Associate”; “associated company”

1362. These interpretative sections are based on sections 416(1) and 417(3) and (4) of ICTA.

Section 450: “Control”

1363. This interpretative section is based on section 416(2) and (3) of ICTA.
1364. *Subsection (1)* specifies that this definition of “control” applies for the purposes of this Part. The definition of “control” in section 840 of ICTA is rewritten in section 1124.
1365. *Subsection (2)* rewrites the general proposition in the opening words of section 416(2) of ICTA.
1366. *Subsection (3)* rewrites the specific propositions in section 416(2)(a) to (c) of ICTA.
1367. *Subsection (4)* rewrites as a separate stipulation the words in brackets in section 416(2) (b) of ICTA.
1368. *Subsection (5)* rewrites section 416(3) of ICTA.

Section 451: Section 450: rights to be attributed etc

1369. This section supplements section 450. It is based on section 416(4) to (6) of ICTA.
1370. *Subsections (2) and (3)* rewrite, respectively, section 416(4) and (5) of ICTA.
1371. *Subsections (4) to (6)* rewrite section 416(6) of ICTA, paragraphing it and breaking it up into sense-units.
1372. Sections 439(5), 446(5) and 447(6) provide for the application of provisions of this section.

Section 452: “Director”

1373. This interpretative section is based on section 417(5) and (6) of ICTA.
1374. Section 417(5) of ICTA refers to “the company’s trade or business”. Section 6(4) (b) of ICTA provides that, in Part 11 of that Act, “trade” includes “vocation” and also includes an office or employment. A company cannot carry on an employment.

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

In relation to a company, “business” is apt to include an office. *Subsection (2)* therefore does not provide that “trade” includes an office or employment. In addition, *subsection (2)* includes a minor change in the law, in that it does not provide that “trade” includes “vocation”. See *Change 4* in Annex 1.

1375. Section 417(5)(b) of ICTA has the phrase “directly or through the medium of other companies or by any other indirect means”. It follows from the meaning of “other” that “through the medium of other companies or by any other indirect means” can be compressed to “by any indirect means”. Compare Viscount Radcliffe’s remarks on “interest, annuities, or other annual payments” in *CIR v Frere* (1964) 42 TC 125 HL on page 152. And, as a matter of normal English usage, “by any indirect means” is synonymous with “indirectly”. *Subsection (2)(b)(ii)* therefore compresses the phrase under review to “directly or indirectly”.
1376. In section 417(6) of ICTA, if a person (P) is deemed to own whatever P’s associates own or control, then “either on his own or with one or more associates” is otiose. *Subsection (3)* therefore omits it. And subsection (3) goes on to omit as otiose “even if he does not own or control share capital on his own”.

Sections 453 and 454 “Loan creditor”; “participator”

1377. These interpretative sections are based on section 417(1), (2) and (7) to (9) of ICTA.