

Relief from Alcohol Products Tax for beer produced in qualifying microbreweries

January 2022 (Revised)

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1. Introduction

A relief from alcohol product tax (50% of alcohol products tax on beer) is available for beer produced in qualifying microbreweries. The relief applies to tax payable at the rate applicable to beer exceeding 2.8% alcohol by volume.

This notice explains the scope of the relief, and the procedures for establishing eligibility and for claiming the relief. The legislative provision is Section 78A of the Finance Act 2003, as amended. A copy of the non-statutory consolidated legislative provisions is at Appendix 1.

From 1st January 2022, new methods for certifying independent small alcohol producers (availing of reduced rates in other Member States) apply to all consignments of “qualifying” alcohol products moving to and from Member States.

Member States will apply one of the following options - (1) Certification or (2) Self-Certification. These methods will enable the fiscal authorities in Member States to establish the eligibility of independent small producers (established in other Member States) for a reduced rate in their territory.

[Commission Implementing Regulation \(EU\) 2021/2266](#) of 17th December 2021 lays down rules for the application of [Council Directive 92/83/EEC](#) as regards the certification and self-certification of independent small producers of alcoholic beverages for excise duty purposes.

Ireland has adopted the “**Self-Certification**” approach. With Self-Certification, independent small Irish breweries consigning beer to other Member States to avail of reduced rates in those territories must declare their status (as an independent small brewery) as well as their annual production. These declarations must be made on the administrative documents accompanying the consignments (e.g. the electronic administrative document (within the meaning of Chapter 2A of Part 2 of the Finance Act 2001) for duty suspended movements or the simplified accompanying document (within the meaning of Part 2 of the Finance Act 2001) for duty paid movements) as the case may be, relating to the consignment of those products. The legislative provision is Section 78B of the Finance Act 2003, as amended. A copy of the non-statutory consolidated legislative provisions is at Appendix 1.

These new procedures for inter-EU movements of micro-brewed beer do not impact on existing “National” procedures to verify domestic production (e.g. APT3 forms are still required).

These new procedures apply to movements of all alcohol products (beer, spirits, wine, other fermented beverages, intermediate products) produced by small Irish producers (availing of reduced rates in other Member States and consigning their product to those Member States); however, this note deals solely with the arrangements for beer. For more information on the arrangements for other alcohol products please see section 11 - Further Guidance.

2. Extent and method of relief

Article 4 of Council Directive 92/83/EEC provides that Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of breweries concerned, to beer brewed by independent small breweries. This is an optional measure which, if applied, Member States shall ensure applies equally to beer delivered into their territory from independent small breweries situated in other Member States.

In 2005 Ireland adopted and applied Article 4 of Council Directive 92/83/EEC by introducing **Section 78A** into the Finance Act 2003 (via Section 63 of the Finance Act 2005). This became known as the “*Small Brewers Relief Scheme*” or the “*Microbrewery Relief Scheme*”. Relief is available, by way of remission or repayment at a rate of 50% of the standard Irish excise rate on beer, to qualifying microbreweries.

The maximum quantity of beer on which relief is allowed for any qualifying brewery in any calendar year is **30,000 hectolitres**.

3. Qualifying criteria in Ireland

Qualifying criteria vary between Member States - below are the criteria to qualify for the relief in Ireland.

3.1 Qualifying criteria for breweries (Section 78A(1) Finance Act 2003)

To qualify for the relief in Ireland the brewery must be:

1. legally and economically independent (within the meaning of Section 78A of the Finance Act 2003) of any other brewery;
2. situated physically apart from any other brewery; **and** in the calendar year previous to the year in which the relief is eligible to be claimed:
3. the quantity of beer brewed in the brewery, including beer brewed for export, for home consumption and under licence, or contract arrangement for another brewery, must not have exceeded 50,000 hectolitres, **and**
4. the quantity of beer brewed in the brewery under a licence, franchise, or contract arrangement for another brewery must have been less than 50% of the brewery’s total production.

Breweries may qualify regardless of whether they are located within the State, and therefore can include breweries located in other Member States and in Third Countries.

3.2 Person owning one or more breweries.

Notwithstanding subparagraphs (2) and (3) above, where a person directly, indirectly, or partly owns two or more microbreweries and the combined total quantity of the beer brewed in those breweries in the previous calendar year has not exceeded 50,000 hectolitres, the breweries are to be treated, for relief purposes, as a single brewery which is legally and economically independent of any other brewery.

3.3 Beer ineligible for relief

Except in circumstances where the conditions set out in paragraph 4 of this notice are met, beer brewed under a licence, franchise or contract arrangement for another brewery is **not** eligible for the relief. However, such beer is reckonable in the calculation of the annual production quantity specified in paragraph 3.1 above.

4. Beer brewed by one qualifying brewery for another (Subsections 78A (1) & 78A (3) Finance Act 2003)

Beer brewed by one qualifying brewery for another qualifying brewery under licence, franchise, contract or other co-operation arrangement **will qualify** for the relief, and the 50% maximum amount of beer permitted to be brewed under such an arrangement (see paragraph 3.1(e)) will not apply, provided that:

1. **each** of the breweries concerned in such an arrangement satisfies the criteria set out at 3.1 (1), (2) and (3), **and**,
2. in the previous calendar year, the quantity of beer brewed in **each** of these breweries did not exceed 50,000 hectolitres, **and**
3. the total quantity of the beer brewed by **all** of the breweries involved in the arrangement(s) **in the previous calendar year did not exceed 100,000 hectolitres.**

5. Relief due to person who paid the Alcohol Products Tax

The repayment or remission of Alcohol Products Tax is available to the person who paid or is liable to pay the tax on the beer. This will normally be the production brewery warehousekeeper, or the importer. It could also be a registered consignee who is entitled to receive the beer under duty suspension.

6. Certification of eligibility

6.1 Form No. APT3 – Certificate of eligibility for Irish-produced beer

Qualification as a microbrewery and eligibility for the relief are determined by the brewery's production in the calendar year prior to the year of the claim period. In the case of start-up producers, the total annual production of beer applicable to the first production year will be the production estimation of the beer declared by the microbrewery.

A brewery warehousekeeper must complete [Form No. APT3](#) in respect of their brewery and forward it to Revenue. Revenue will confirm that the microbrewery meets the qualification requirements and will certify the form accordingly. Microbrewery relief will not be granted on beer unless a certified APT3 form is available for the brewery at which the beer was produced.

Where the microbrewery is situated in Ireland, an APT3 form should be completed and filed as follows:

- The form must be completed by the brewery warehousekeeper. The brewery warehousekeeper must ensure that he/she has completed the **appropriate declaration** pertaining to the circumstances under which certification of eligibility is sought.
- The completed and signed APT3 form should be forwarded by the brewery warehousekeeper to his/her local Revenue Office for certification of eligibility. The certification is to cover entitlement to relief for the **current** year.
- The local Revenue Office should return a copy of the APT3 form, duly certified, to the brewery warehousekeeper.
- The brewery warehousekeeper should retain this copy of the certified APT3 form for audit purposes.

6.2 Certification of eligibility for beer produced in other Member States

Where a qualifying microbrewery is located in another EU Member State:

Member States may adopt either the Certification or Self-Certification approach and destination Member States (i.e. Member States of consumption) must recognise the approach adopted in the issuing Member State (i.e. Member State of production) in respect of consignments arriving into their territory.

The information required for Revenue to check that the producer qualifies as a small independent brewery will be on the administrative document (e.g. e-AD if it is a duty suspended movement or SAD if it is a duty paid movement). This is detailed further in sections 7.2 and 7.3 below.

Microbrewery relief will not be granted to an authorised warehousekeeper, importer or registered consignee unless the relevant information is included in the administrative document.

6.3 Certification of eligibility for beer produced in a Third Country

Where qualifying beer produced in a Third Country is consigned to the State by a microbrewery, it must be accompanied by a declaration from the consignor that is endorsed by the Fiscal Authority of the Country of dispatch. See section 7.4. - Imports of qualifying beer produced in Third Countries.

7. Movements of qualifying beer

7.1 Movement within the State

Form C & E 1116 is to be used for movements of qualifying beer under duty suspension between tax warehouses in the State. No other alcohol products are to be included on the form.

Beer consigned to another tax warehouse by the microbrewery warehousekeeper should be accompanied by the form C & E 1116 that is endorsed with the following declaration:

'It is hereby certified that the beer described in this form has been produced in an independent microbrewery and is eligible for relief under Section 78A of the Finance Act 2003. A completed and certified form APT3 has been forwarded to the local Revenue Office at the following address - (state the address here of the local Revenue Office to which the form has been submitted)'

A copy of the original form C & E 1116 bearing the above certification must be included with the documentation covering any subsequent consignment(s) of this qualifying beer under duty suspension to another tax warehouse in the State.

7.2 Receipt, under duty suspension, of qualifying beer produced in Other Member States

If the Issuing Member State applies the Certification approach:

Where qualifying beer produced in another EU Member State is consigned into the State under duty suspension and the issuing Member State applies the **Certification** approach, the relevant information will be contained in the **electronic administrative document (e-AD)** in the following boxes:

Box 17i (a declaration that the beer has been produced by a certified independent small brewery stating *'The product described has been produced by a certified independent small brewery'*)

Box 18e (the document type which will be "a certificate")

Box 18f (the serial number of the certificate)

Box 17n of the electronic administrative document may include the annual production of the certified producer although this is not a mandatory requirement. The completion of box 17n is only mandatory when self-certification is applicable. Where box 17n does not contain the annual production and the control officer suspects the producer may have exceeded the production threshold, they can request a copy of the certificate using the relevant serial number listed in **box 18f**.

If the Issuing Member State applies the Self-Certification approach:

Where qualifying beer produced in another EU Member State is consigned into the State under duty suspension and the issuing Member State applies the **Self-Certification** approach the relevant information will be contained in the **electronic administrative document (e-AD)** in the following boxes:

Box 17l (a declaration certifying that the beer has been produced by an independent small brewery (stating “*It is hereby certified that the product described has been produced by an independent small brewery*”),

and,

the VAT or SEED number of the producer if the consignor is not the producer. The VAT number shall be indicated only when the independent small producer does not have a SEED number.)

Box 17n (The annual production of beer in hectolitres of the small independent producer).

7.3 Receipt of duty-paid qualifying beer produced in Other Member States

If the Issuing Member State applies the Certification approach:

Where qualifying beer produced in another EU Member State is consigned into the State duty paid and the issuing Member State applies the **Certification** approach, the relevant information will be contained in the **simplified accompanying document (SAD)** in the following box:

Box 14:

- the serial number of the certificate, and
- the term “*Certificate of independent small brewery*”.
- In cases where the movement of goods includes different alcoholic beverages and it is intended to apply the reduced excise duty only to certain beverages (e.g. beer), the commercial description of the alcoholic beverages produced by the independent small producer shall be indicated in **box 14** of the **simplified accompanying document (SAD)**.

Where the control officer suspects the producer may have exceeded the production threshold, they can request a copy of the certificate using the relevant serial number listed in **box 14**.

If the Issuing Member State applies the Self Certification approach:

Where qualifying beer produced in another EU Member State is consigned into the State duty paid and the issuing Member State applies the **Self Certification** approach, the relevant information will be contained in the **simplified accompanying document (SAD)** in the following box:

Box 14:

- the status of the independent small producer in the following terms: “*It is hereby certified that the product described has been produced by an independent small brewery*”

- the total annual production in hectolitres
- the SEED or VAT number of the self-certified independent small brewery, when the consignor of the beer is not the producer. The VAT number shall be indicated only when the independent small producer does not have a SEED number.
- the commercial description of the alcoholic beverages produced by the independent small producer where the movement of goods includes different alcoholic beverages and it is intended to apply reduced excise duty only to certain beverages (e.g. beer).

7.4 Imports of qualifying beer produced in Third Countries

Where qualifying beer produced in a Third Country is consigned to the State, it must be accompanied by a declaration that is endorsed by the Fiscal Authority of the Country of dispatch, stating:

‘It is hereby certified that the beer (description) has been produced in an independent micro-brewery and is eligible for relief under Section 78A of the Finance Act 2003’

This beer is reckonable in the calculation of the annual production quantity of the importing microbrewery.

7.5 Consignments of beer produced in Irish breweries to Other Member States

Beer produced in Irish breweries consigned to other Member States may be eligible for relief or reduced rates offered in those countries.

Qualifying criteria for reduced rates vary between Member States. While Ireland offers reduced rates to small brewers whose annual production does not exceed 50,000 hectolitres, any Irish breweries producing beer in excess of the Irish threshold (50,000 hectolitres) but below the EU threshold (200,000 hectolitres) may be entitled to reduced rates in other Member States. Enquiries in this regard should be made directly with the tax authorities of the country to which the beer is being dispatched.

Under Article 4(2) of Council Directive 92/83/EEC, Member States may allow two or more small cooperating breweries whose combined annual production does not exceed 200,000 hectolitres to be treated as a single independent brewery. This practice is allowed in Ireland providing applicable criteria are met and is covered in Irish legislation by Section 78A (3)(b) of Finance Act 2003 (as amended). In Ireland, combined annual production must not exceed 100,000 hectolitres.

A Judgment in CJEU cases [C-221/20 and C-223/20](#) was announced on 28th October 2021. It confirms that Article 4(2) of Council Directive 92/83/EEC provides Member States an option, not an obligation, to treat cooperating breweries as a single independent brewery.

If consigning microbrewery beer to other Member States, be aware that some Member States do not allow this type of cooperation. You may be in a cooperation arrangement and treated as a single independent brewery in Ireland but be ineligible for reduced rates of excise duty in

some Member States. It is important to be aware of your obligations to individual Member States when consigning microbrewery beer.

From 1st January 2022, new methods for certifying independent small alcohol producers apply to all consignments of “qualifying” alcohol products to and from Member States.

Therefore, where independent small Irish breweries are consigning beer to other Member States to avail of reduced rates in those Member States (and they comply with the criteria set in that destination Member State), they must declare their status as an independent small brewery and their annual production. These declarations must be made in the administrative documents accompanying the consignments (e.g. the electronic administrative document (within the meaning of Chapter 2A of Part 2 of the Finance Act 2001) for duty suspended movements or the simplified accompanying document (within the meaning of Part 2 of the Finance Act 2001) for duty paid movements.

In particular, the Irish brewery warehousekeeper or consignor must make the following declarations in the administrative documents:

Duty Suspended Consignments

For the movement of goods under Chapter IV of Directive 2008/118/EC, the status of the independent small breweries shall be declared in **Box 17l** of the **administrative document (e-AD)**, as set out in Table 1 of Annex I to Regulation (EC) No 684/2009, in the following terms:

“It is hereby certified that the product described has been produced by an independent small brewery”

The annual production of beer of the brewery shall be declared in **Box 17n** of the **administrative document (e-AD)**, as set out in Table 1 of Annex I to Regulation (EC) No 684/2009. The quantity shall be indicated in hectolitres.

When the consignor of the beer is not the self-certified independent small brewery, the number in the system for exchange of excise data referred to in Article 19(1) of Council Regulation (EU) No 389/2012¹ (‘SEED number’) or value added tax number (‘VAT number’) of the brewery shall also be declared in **Box 17l**.

The SEED number shall be the excise related authorisation number granted by the competent authorities referred to in Article 19(1) of Regulation (EU) No 389/2012. The VAT number, as referred to in Article 214 of Council Directive 2006/112/EC², shall be indicated only when the independent small brewery does not have a SEED number.

¹ Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 347, 11.12.2006, p. 1).

Duty Paid Consignments

For the movement of goods under Chapter V of Directive 2008/118/EC, the following information shall be declared in **Box 14** of the **simplified accompanying document (SAD)**, as set out in Regulation (EEC) No 3649/92:

- the status of the independent small brewery in the following terms:
“It is hereby certified that the product described has been produced by an independent small brewery”
- the total annual production of beer in hectolitres.
- the SEED or VAT number of the self-certified independent small brewery, when the consignor of the beer is not the producer. The VAT number, as referred to in Article 214 of Council Directive 2006/112/EC, shall be indicated only when the independent small brewery does not have a SEED number.
- the commercial description of the alcoholic beverages produced by the independent small producer where the movement of goods includes different alcoholic beverages and it is intended to apply reduced excise duty only to the beer.

7.6 Consignments of beer produced in Irish breweries to Third Countries

Beer produced in Irish breweries consigned to other countries outside the EU (Third Countries) may also be eligible for relief or reduced rates offered in those countries. Enquiries in this regard should be made directly with the tax authorities of the country to which the beer is being dispatched. This notice is not relevant to applications for relief or reduced rates under those schemes.

8. Remission/Repayment procedure

8.1 Remission of Alcohol Products Tax

Authorised brewery warehousekeepers with deferred payment arrangements may claim the relief on alcohol products tax on qualifying beer by returning their alcohol products tax liability net of the amount of the relief due on their C&E 1098M (Beer Duty Return) using Excise Reference Number (ERN) 9620. A certified APT3 form must be available for the brewery at which the beer was produced. Other authorised warehousekeepers with deferred payment arrangements may claim the relief on qualifying beer in the same way, using their C&E 1115 (Home Consumption Warrant) and ERN 9621. The claim must be supported by a certified APT3 form in respect of the microbrewery at which the beer was produced.

Beer exceeding 2.8% vol. received from a qualifying microbrewery outside the State is declared either on a C&E 1115 (Home Consumption Warrant) or C&E 1087 (Excise Duty Entry). Where the requirements have been met, including the provision of the required information outlined in sections 7.2, 7.3 and 7.4, the relief is claimed using ERN 9421.

8.2 Repayment of Alcohol Products Tax

8.2.1 Claims by Repayment - Claim form

Repayment claims for repayment of tax paid will be dealt with by the local Revenue Office using [Form APT 4](#). A separate claim form is to be used in respect of each microbrewery in which beer qualifying for the relief is produced. The claim form, when completed and signed by the claimant, is to be sent to the claimant's local Revenue Office.

Claimants should ensure that all the information requested is provided and that the declaration is signed. Incomplete or unsigned forms will be returned.

8.2.2 Claims by Repayment - Claim period and time limits

Claims for repayment of alcohol product tax paid are to be made to Revenue for each period of 3 calendar months, beginning on the first day of January, April, July, or October as appropriate. In most cases, there will be a deferred payment arrangement, so that tax paid in, for example, January, February and March will be in respect of tax liability for the months December, January and February, respectively. Repayment claims should be forwarded within 6 months following the end of each claim period. Claims lodged outside the prescribed time limit may not be paid except in exceptional circumstances.

9. Audit procedures

A proportion of relief claims (by remission and repayment) will be subject to a Revenue Audit annually. In this context claimants should maintain the following records:

- Proof of Alcohol Products Tax payment on the beer in the State i.e. details of serial number and date of payment documents C&E 1098, C&E 1098M, C&E 1115, or C&E 1087 as appropriate.
- In the case of breweries, the total quantity of beer produced in the brewery in each calendar year.
- In the case of breweries, the total quantity of beer brewed under a licence, franchise or contract arrangement for another brewery in each calendar year.
- The quantity of beer delivered under duty suspension arrangements:
 - to other tax warehouses in the State,
 - to other Member States of the European Union, and
 - to countries outside the European Union.
- Certified APT3 Form(s) (or other form of satisfactory production certification issued by a Fiscal Authority).

10. Records

All records in relation to the production, storage, sale, tax-payment, tax-repayment etc., of beer are subject to the provisions of Part 5 of the Alcohol Products Tax Regulations 2004 (Statutory Instrument No. 379 of 2004) and must be preserved for a period of six years.

11. Further Guidance

For further guidance see:

- [Alcohol Products Tax and Reliefs Manual](#)
- [Administration & Control of Tax Warehouses Manual Part 1 – General Warehousing Provisions](#)
- [Administration & Control of Tax Warehouses Manual Part 2 – Breweries, Micro-breweries and Cider Manufacturers](#)
- [Movement of Excisable Products Manual](#)
- [EMCS Trader Guide](#)

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Appendix 1- Non-statutory consolidation of the Finance Act provisions relating to microbrewery reliefs

Section 78A, Finance Act 2003 (as inserted by Section 63, Finance Act 2005 and amended by Section 73, Finance Act 2008 (No. 3 of 2008) and Section 51, Finance (No. 2) Act 2008 (No. 25 of 2008) and Section 59 of Finance Act 2014 and Section 43 of Finance Act 2015 and Section 37 of Finance Act 2016 and Section 43 of Finance Act 2019 and Section 43 of Finance Act 2021).

Section 78B, Finance Act 2003 (as inserted by Section 42, Finance Act 2021)

Relief for small breweries

78A.- (1) In the case of beer subject to alcohol products tax at the rate for beer exceeding 2.8% vol, a relief of half the amount of alcohol products tax paid on such beer shall, subject to subsection (3) and to such conditions as the Commissioners may prescribe or otherwise impose, be granted on a quantity of beer, not exceeding 30,000 hectolitres in a calendar year, brewed in a brewery –

(a). in which the quantity of beer brewed in the previous year has not exceeded 50,000 hectolitres,

(b). which is legally and economically independent of any other brewery,

(c). the premises of which are situated physically apart from those of any other brewery, and

(d). in which less than 50 per cent of the beer brewed in the previous calendar year has been brewed under a licence, franchise or contract arrangement for another brewery.

(2) Relief under subsection (1) shall be granted by the Commissioners either by means of remission or repayment.

(3) (a) Subject to paragraph (b), relief under subsection (1) does not apply to any beer brewed for another brewery under a licence, franchise or contract arrangement.

(b) Notwithstanding paragraph (a), where beer is brewed in a brewery under a licence, franchise, contract or other cooperation arrangement with one or more other breweries, and where —

(i). such brewery and each of the breweries with which it has such an arrangement satisfy the criteria set down in paragraphs (a), (b) and (c) of subsection (1), and

(ii). the combined total quantity of the beer brewed in the previous calendar year, in such brewery and the breweries with which it has such an arrangement, has not exceeded 100,000 hectolitres,

then subsection 1(d) does not apply, and such beer qualifies for relief under subsection (1).

(4) (a) For the purposes of subsection (1)(b) a brewery is not considered to be legally and economically independent of another brewery where such breweries are directly or indirectly owned or partly owned —

(i). by the same person, or

(ii). by associated companies within the meaning of section 432 of the Taxes Consolidation Act 1997* or by legal entities corresponding to such associated companies.

(b) Notwithstanding subsection (1) (b) and paragraph (a), where a person referred to in subparagraph (i) or (ii) of paragraph (a) directly or indirectly owns two or more breweries and the combined total quantity of the beer brewed in those breweries in the previous calendar year has not exceeded 50,000 hectolitres, they may be treated for the purposes of this section as a single brewery which is legally and economically independent of any other brewery.

(5) (a) Claims for repayment under subsection (2) shall be made in such form as the Commissioners may direct and shall be in respect of payments of alcohol products tax made within a period of 3 calendar months beginning on the first day of January, April, July or October.

(b) A repayment may not be made under this section unless the claim is made within 6 months following the end of each such period or within such longer period as the Commissioners may, in any particular case, allow.

Certification of small producers

78B. (1) A producer of alcohol products established in the State—

(a) availing of relief under section 78A in the State, or

(b) availing of reduced rates of duty in accordance with Article 4, 9a, 13a, 18a or 22 of the Directive in another Member,

shall, in accordance with such conditions as the Commissioners may prescribe, provide declarations as to—

(i) the compliance of the producer with the criteria set out in Article 4, 9a, 13a, 18a or 22 of the Directive, as may be applicable, and

(ii) the total annual production of the producer in the previous year.

(2) A consignor of alcoholic products referred to in subsection (1) shall ensure that the declarations referred to in that subsection are made in the electronic administrative document (within the meaning of Chapter 2A of the Part 2 of the Finance Act 2001) or the simplified accompanying document (within the meaning of Part 2 of the Finance Act 2001), as the case may be, relating to the consignment of those products.

Section 432 Taxes Consolidation Act 1997

Meaning of 'associated company' and 'control'

432.—(1) For the purposes of this Part, a company shall be treated as another company's associated company at a particular time if, at that time or at any time within one year previously, one of the 2 companies has control of the other company, or both companies are under the control of the same person or persons.

(2) For the purposes of this Part, a person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire—

1. the greater part of the share capital or issued share capital of the company or of the voting power in the company,
2. such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed, or
3. such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(3) Where 2 or more persons together satisfy any of the conditions of subsection (2), they shall be taken to have control of the company.

(4) For the purposes of subsection (2), a person shall be treated as entitled to acquire anything which such person is entitled to acquire at a future date or will at a future date be entitled to acquire.

(5) For the purposes of subsections (2) and (3), there shall be attributed to any person any rights or powers of a nominee for such person, that is, any rights or powers which another person possesses on such person's behalf or may be required to exercise on such person's direction or behalf.

(6) For the purposes of subsections (2) and (3), there may also be attributed to any person all the rights and powers of—

1. any company of which such person has, or such person and associates of such person have, control,
2. any 2 or more companies of which such person has, or such person and associates of such person have, control,
3. any associate of such person, or

4. any 2 or more associates of such person, including the rights and powers attributed to a company or associate under subsection (5),but excluding those attributed to an associate under this subsection, and such attributions shall be made under this subsection as will result in the company being treated as under the control of 5 or fewer participators if it can be so treated.