

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2018 edition

INTERPRETATION AND BASIC CHARGING PROVISIONS

PART 1 INTERPRETATION

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Interpretation and Basic Charging Provisions

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INTERPRETATION AND BASIC CHARGING PROVISIONS

PART 1 INTERPRETATION

Overview

This Part provides for the definition and interpretation of certain terms and references used in the Taxes Consolidation Act 1997 (TCA 1997). The TCA 1997 consolidates enactments relating to income tax, corporation tax and capital gains tax. Certain enactments which relate to these taxes also relate to other taxes and duties and the TCA 1997 also consolidates these enactments.

1 Interpretation of this Act

This section defines, for the purposes of the TCA 1997 and of all future enactments, the 4 streams of legislation which are brought together in the Act, namely —

- the Capital Gains Tax Acts (which consist of the provisions relating to capital gains tax in the TCA 1997 and any other Act),
- the Corporation Tax Acts (which consist of the provisions relating to corporation tax in the TCA 1997 and any other Act),
- the Income Tax Acts (which consist of the provisions relating to income tax in the TCA 1997 and any other Act), and
- the Tax Acts (which consists of the Income Tax Acts and the Corporation Tax Acts).

Within the TCA 1997 it is necessary to preserve the integrity of these 4 streams of legislation so that enactments which relate solely to income tax, corporation tax or capital gains tax or alternatively to a combination of these taxes continue to so relate.

The section also provides for a definition of “repealed enactments” and sets out rules for the construction of certain references. (1), (3) to (5)

2 Interpretation of Tax Acts

Summary

This section gives the meaning of certain terms and sets out rules for the construction of certain references used in the Tax Acts. The various definitions and rules of construction apply unless the context requires otherwise.

Details

Definitions

Many of the terms mentioned in the section are, in fact, defined elsewhere in either the Income Tax Acts or the Corporation Tax Acts and are listed in this section so as to give them general application throughout the Tax Acts. The provisions where these definitions are found are — (1)

- **section 850** – Appeal Commissioners;
- **section 851** – Collector-General;
- **Part 34** – the construction of the terms resident and ordinarily resident.

Terms such as “Clerk to the Appeal Commissioners”, “ordinary share capital”, “profession”, “year of assessment” and “the year 1997–98” are self-explanatory.

“appropriate inspector” is defined in relation to a person to include the inspector or Revenue officer who usually deals with the person’s tax affairs or who is the inspector or Revenue officer in charge of the Revenue district dealing the tax affairs of persons located in the city or county in which the person is located;

“body of persons” is defined widely to encompass most types of entities, both corporate and non-corporate;

“capital allowances” are capital allowances granted for capital expenditure on —

- industrial buildings or structures, machinery or plant, and dredging under **Part 9**,
- farm buildings and other farm works and milk quota under **Part 23**,
- mining under **Chapter 1 of Part 24**,
- purchase of patent rights and transmission capacity rights under **Chapters 1 and 4**, respectively, of **Part 29**,
- scientific research under **section 765**, and
- certain training under **section 769**.

“child of the civil partner”, in relation to a individual means a child of the individual’s civil partner who was born before the registration of their civil partnership;

“inspector” includes an inspector of taxes appointed under **section 852**, other Revenue officers who carry out similar duties as an inspector of taxes, and Revenue officers who are employed or act in the execution of the Tax Acts or Capital Gains Tax Acts;

“inspector of returns” means an inspector appointed under **subsection (1A)**;

“statute” is given the same meaning as in section 3 of the Interpretation Act, 1937, which defines the term as including Acts of the Oireachtas, Acts of the Oireachtas of Saorstát Éireann, Acts of the Parliament of the former United Kingdom of Great Britain and Ireland, and Acts of a Parliament sitting in Ireland at any time before the coming into force of the Union with Ireland Act, 1800.

“surviving civil partner”, in relation to 2 individuals who were civil partners of each other until the death of one of them, means the civil partner other than the civil partner who died;

In regard to the definition of “local authority”, it should be noted that, by virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, references in any other enactment to “county borough corporation”, “borough corporation” (not being a county borough corporation), “council of a county” and “council of an urban district”, and to similar or analogous expressions, are now to be construed as references to “City council”, “Borough council of a borough mentioned in Chapter 1 of Part 1 of Schedule 6 to the Local Government Act 2001”, “County council” and “Town council of a town mentioned in Chapter 2 of Part 1 of Schedule 6 to the Local Government Act 2001”, respectively.

Construction

The section also provides for the construction of the terms “a source of income is within the charge to income tax or corporation tax”, “a person being within the charge to tax” and “income being within the charge to tax”. Where these terms occur in the Tax Acts they are to be taken as meaning that income tax or corporation tax, as appropriate, is chargeable on the income arising from the source, or is chargeable on the person, or is chargeable on the income. (1)

The Revenue Commissioners may nominate an inspector to be the inspector of returns. Such inspector shall take delivery of returns and other material that is required to be delivered to him or her under the Tax Acts or Capital Gains Tax Acts and his or her name is to be published in Iris Oifigúil. (1A)

In the Tax Acts and in any Act to be construed with the Tax Acts, the term “tax”, where neither income tax nor corporation tax is specified, can mean either of those taxes. However, the use of “income tax” in any provision rather than “tax” is not to be taken as conclusive proof of the fact that the provision is not also to be applied for the purposes of corporation tax by virtue of *section 76*. *Section 76* applies income tax law and principles for the purposes of the computation and assessment of corporation tax. In the TCA 1997 those provisions which apply to income tax but which also apply to corporation tax by virtue of *section 76* generally refer to just “tax” and the reference is to be interpreted as referring to either “income tax” or “corporation tax”. Where the provision refers to just “income tax” it will generally just apply for income tax purposes, but the reader should not ignore the possibility of it also applying for corporation tax purposes. (2) & (3)

A reference to a tax credit attaching to a distribution is a reference to a credit as computed under the Tax Acts as they applied when the distribution was made (even though tax credits were abolished from 6 April, 1999 this provision is necessary as some provisions relating to tax credits are still applicable). (3A)

In the Tax Acts — (3B)

- references to a man, married man or husband is to be taken as references to a woman, married woman or a wife, as the case may be, and vice versa, and
- provisions relating to the tax treatment of a husband or wife are to be taken in such a way as to give effect to this section.

3 Interpretation of Income Tax Acts

Summary

This section gives the meaning of certain terms and sets out rules for the construction of certain references used in the Income Tax Acts. The various definitions and rules of construction apply unless the context requires otherwise.

Details

Definitions

Certain of the terms mentioned in the section are, in fact, defined elsewhere in the Income Tax Acts and are listed in this section so as to give them general application throughout the Income Tax Acts. The provisions where these definitions are found are — (1)

- **section 15** – higher rate and standard rate;
- **section 458** – taxable income.

“chargeable tax” means the tax chargeable in respect of total income after allowing the various deductions from that income but *before* it is reduced by credits and other tax reliefs (defined as “general tax credits”) while “income tax payable” is the actual tax due and is the chargeable tax less personal and general tax credits.

The definitions of “incapacitated person” and “total income” are self-explanatory.

“personal tax credit” means a tax credit specified in **sections 461, 461A, 462B, 463, 464, 465, 466, 466A, 468** and **472**.

The term “relative” is not defined in any true sense and must, therefore, take its normal meaning. The section, however, does extend the term to include an individual under 16 years of age in the custody of and maintained by the individual claiming the relief at that individual’s own expense.

The term “tax” is defined as meaning “income tax”. It is to be noted that the definition of “tax” for the purposes of the Tax Acts which is contained in **section 2** does to a large extent overrule this definition. Where “tax” appears in the Income Tax Acts it means income tax. However, for the purposes of the Tax Acts (which includes both the Income Tax Acts and the Corporation Tax Acts), the same reference can mean either income tax or corporation tax.

The section does not provide a comprehensive definition of “trade”. It does, however, extend the meaning to include every trade, manufacture, adventure or concern in the nature of trade. It is necessary to refer to the extensive body of case law so as obtain a full picture on what is or is not a trade. Some assistance in the matter is given in the UK report of the Royal Commission on the Taxation of Profits and Income which identified a number of “badges of trade” – that is, factors which should be taken into consideration when deciding whether or not a particular activity constitutes trading.

An individual’s (and in the case of a married man the reference is to be taken as including his wife where the wife’s profits are treated as the husbands profits and in the case of civil partners the reference is to be taken as including the civil partner who is assessed to tax in respect of their joint income) “earned income” is — **(2) & (3)**

- income from the individual’s office/employment,
- income from any pension, superannuation, deferred pay or compensation for loss of office given in respect of the past services of the individual or of the individual’s husband, civil partner or parent or given to the individual in respect of the past services of any deceased person irrespective of whether the individual or the individual’s husband, civil partner or parent contributed to the pension, superannuation, allowance or deferred pay,
- income from property attached to or derived from the emoluments of an office/employment held by the individual (examples would be benefits-in-kind such as rent free accommodation),
- income from a trade or profession,
- annuities (approved under **Chapter 2** of **Part 30** – relief for retirement annuities) payable to the individual to the extent that the annuity relates to any amount on which relief is given under **section 787**, and

- the Capital Gains Tax Acts (which consist of the provisions relating to capital).

The concept of “earned income” is now relevant only in the context of the meaning of “investment income” in *section 783(1)(a)* (which provides for the interpretation of *Chapter 2* of *Part 30* – relief for retirement annuities) and *section 434(1)* (which is concerned with the meaning of the investment income and estate income of a company for the purposes of the close company surcharge provided for by *section 440*).

Construction of references to profits or gains

References to profits/gains in the Income Tax Acts are not to be taken as including (4) chargeable gains within the meaning of the Capital Gains Tax Acts.

4 Interpretation of Corporation Tax Acts

Summary

This section gives the meaning of certain terms and sets out the rules for the construction of certain references used in the Corporation Tax Acts. The various definitions and rules of construction apply unless the context requires otherwise.

Details

Definitions

Certain of the terms mentioned in the section are, in fact, defined elsewhere in the Corporation Tax Acts and are listed in this section so as to give them general application throughout the Corporation Tax Acts. The provisions where these definitions are found are — (1)

section 156 – franked investment income and franked payment;

section 243(1) – charges on income;

section 411 – group relief;

sections 430 and *431* – close company;

Chapter 2 of *Part 6* and *sections 436, 437* and *816(2)(b)* – distribution.

The definitions of “accounting date”, “period of account”, “branch or agency”, “the financial year”, “interest”, “preference dividend” and “profits” are self-explanatory.

For the purposes of corporation tax on chargeable gains —

- “chargeable gain” has the same meaning as in the Capital Gains Tax Acts (this meaning is found in *section 545*). Excluded, however, are gains accruing to a company on disposals made before 6 April, 1976; and
- “allowable loss” does not include a loss accruing on a disposal of an asset if a gain from the disposal (had such arisen) would have been exempt from corporation tax.

The section defines “company” in very broad terms as meaning any body corporate including a trustee savings bank, and then excludes from its scope —

- the Health Service Executive,
- European Economic Interest Groupings as defined in *section 1014*,
- education and training boards,

- committees of agriculture, and
- local authorities (as defined in section 2(2) of the Local Government Act, 1941), including bodies established under the Local Government Services (Corporate Bodies) Act, 1971.

In regard to the definition of “local authority”, it should be noted that, by virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, references in any other enactment to “local authority for the purposes of the Local Government Act, 1941”, and to similar or analogous expressions, are now to be construed as references to “a county council, city council and town council, and where the context so requires includes a joint body” within the meaning respectively assigned to each of those terms in the Local Government Act 2001.

The section defines the following terms which are used in *section 76A* dealing with the computation of profits or gains of a company.

“generally accepted accounting practice” is defined as being either International Accounting Standards (IAS) or Irish generally accepted accounting practice (Irish GAAP). The concept of generally accepted accounting practice is used in *section 76A*. IAS and Irish GAAP are separately defined.

“International Accounting Standards” (IAS) are defined as international accounting standards within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards.

“Irish generally accepted accounting practice” means generally accepted accounting practice with respect to accounts, that are not prepared in accordance with International Accounting Standards, of Irish incorporated companies and which are intended to give a true and fair view.

The section defines the terms “SE” and “SCE”. These terms are used for the purposes of implementing Council Directive 2005/19/EC, which amended the 1990 Merger Directive (90/434/EEC):

- An “SE” is a European public limited liability company (Societas Europaea or SE) as provided for by Council Regulation (EC) No. 2157/2001 of 8 October 2001. The Regulation, which has direct effect, provides for a new type of company that can operate across borders and that must be registered and have its head office in an EU Member State. Such a company can move its registered office from one Member State to another. The Regulation provides for the formation and regulation of an SE. In certain cases, an SE can be formed by the merger of existing companies.
- An “SCE” is a European Cooperative Society as provided for by Council Regulation (EC) No. 1435/2003 of 22 July 2003. The Regulation, which has direct effect, provides for a new type of legal entity that can operate across borders. In many ways it is similar to an SE. The Regulation provides for the formation and regulation of an SCE. In certain case an SCE can be formed by a merger of existing entities.

The definition of “standard credit rate” provides a percentage which is used in calculating the credit to be allowed under *section 143(7)* against the income of an individual which is chargeable at the higher rate of income tax and is represented by distributions made by a company out of tax relieved income of coal, gypsum and anhydrite mining operations. It is —

- for the year of assessment 1997–98 —
 - 21 per cent as respects distributions made before 3 December, 1997, and
 - 11 per cent as respects distributions made on or after that date,
- for the year of assessment 1998–99 11 per cent.

No figure is given for further years of assessment as tax credits on distributions were abolished from 6 April, 1999.

The definition of “standard credit rate per cent” provides a figure, namely 21 or 11 as appropriate, which is used in various formulae to calculate the tax credit attaching to distributions (see *section 136* – tax credit for certain recipients of distributions; *section 143* – distributions out of profits from coal, gypsum and anhydrite mining operations; and *section 145* – distributions out of profits from export of certain goods). It is also used in the formula in *section 139* to determine the amount of “gross dividends” and in the formula in *section 729(5)* to restrict the set-off of tax credits against certain corporation tax payable by overseas life assurance companies.

The definition of “standard rate per cent” provides a figure, currently 20, which is based on the standard rate of income tax and which is used in *section 725(2)* to calculate the additional corporation tax liability of life assurance companies which arises where a policy of life assurance ceases to be a special investment policy, in *section 738(2)* to determine the corporation tax liability of collective investment undertakings, and in *section 739(2)* to calculate the increase in income attributable to a payment to a unit holder in an undertaking for collective investment for the purposes of set off against the corporation tax liability of the unit holder.

As in the Income Tax Acts “trade” is not defined in any detail, but is expressed to include a vocation, office or employment. Thus, it is necessary to refer to the extensive body of case law so as to obtain a full picture on what is or is not a trade. Some assistance in the matter is given in the U.K. report of the Royal Commission on the Taxation of Profits and Income which identified a number of “badges of trade” – that is, factors which should be taken into consideration when deciding whether or not a particular activity constitutes trading.

Construction

Words and expressions used in the Corporation Tax Acts have the same meaning as they have in the Income Tax Acts. However, words and expressions which are specifically defined in the Corporation Tax Acts do not affect the meaning of the same words and expressions in the Income Tax Acts even where the Income Tax Acts apply for the purposes of corporation tax. This applies unless the corporation tax provision expressly states that the meaning is to apply also for the purposes of the Income Tax Acts. (2)

References to distributions or payments received by a company apply to those received by another person on behalf of the company, but not to those received by the company on behalf of another person. (3)

References to “profits brought into charge to corporation tax” are to be taken as references to the gross amount of profits chargeable to corporation tax before any deduction for charges, management expenses, group relief, etc. References to “total income brought into charge to corporation tax” are to be taken as references to the total of all income (that is, trading profits, investment income, etc) from all sources included in the amount of gross profits brought into charge to corporation tax without any (4)

deduction for charges, management expenses or group relief, etc. Finally, references to “an amount of profits on which corporation tax falls finally to be borne” is to be taken as the net amount of profits after making all the deductions which reduce those profits.

Dividends are to be treated as paid on the date they become due and payable. (5)

Apportionments to different periods are to be made on a time basis in accordance with the respective lengths of the periods. (6)

Where the European Commission adopt an IAS subject to some modification, generally accepted accounting practice under IAS can be regarded as allowing the use of the IAS standard with or without that modification, and accounts prepared on either basis will be regarded as according with IAS. (7)

5 Interpretation of Capital Gains Tax Acts

Summary

This section gives the meaning of certain terms and rules for the construction of certain references used in the Capital Gains Tax Acts. The various definitions and rules of construction apply unless the context requires otherwise.

Details

Definitions

Certain of the terms mentioned in the section are, in fact, defined elsewhere in the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts and are listed in this section so as to give them general application throughout the Capital Gains Tax Acts. The provisions where these definitions are found are — (1)

section 2 – appropriate inspector, body of persons, inspector and inspector of returns;

section 10 – settlement and settlor;

section 89 – trading stock;

section 208 – charity;

section 430 – close company;

section 432 – control;

section 534 – part disposal;

section 545 – chargeable gain;

section 546 – allowable loss;

section 548 – market value;

section 560 and *paragraph 2 of Schedule 14* – wasting asset;

section 799 – personal representative;

section 850 – Appeal Commissioners;

Part 34 – resident and ordinarily resident.

In regard to the definition of “local authority”, it should be noted that, by virtue of section 3(2) of, and Schedule 2 to, the Local Government Act 2001, references in any

other enactment to “local authority for the purposes of the Local Government Act, 1941”, and to similar or analogous expressions, are now to be construed as references to “a county council, city council and town council, and where the context so requires includes a joint body” within the meaning respectively assigned to each of those terms in the Local Government Act 2001.

“child of the civil partner” means a child of the civil partner of an individual who was born before the civil partnership was registered or during their civil partnership;

“civil partner” means a civil partner as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“civil partnership” means —

- a civil partnership registration referred to in section 3(a) of the 2010 Act (i.e. a civil partnership registration that has not been dissolved or the subject of a decree of nullity), or
- a legal relationship referred to in section 3(b) of the 2010 Act (i.e. a legal relationship of a class that is subject to an order recognising registered foreign relationships) that has not been dissolved or the subject of a decree of nullity.

“company” is defined in broad terms as any body corporate with the only exception being a European Economic Interest Grouping within the meaning of *section 1014*.

In relation to land, “lease” includes an underlease, sub-lease, tenancy or licence. The term also includes any agreement for a lease, underlease, sub-lease, tenancy or licence. Where the land is outside the State, the term is extended to cover any interest which corresponds to a lease as defined. Land includes any interest in land.

In relation to other property, “lease” means any kind of arrangement where payments are made for the use of, or in respect of, property.

“legatee” includes persons inheriting property, whether in their own right or as trustee —

- under a testamentary disposition (that is, a valid will),
- under an intestacy or partial intestacy (that is, where there is no valid will or where a valid will does not dispose of all of a person’s property),
- under the Succession Act, 1965 (for example, a spouse’s or child’s or a civil partner’s or a child of a civil partner’s legal right),
- by virtue of survivorship (that is, the survivor of a joint tenancy).

The term is also to be taken as including a person receiving a donatio mortis causa which is, broadly, a gift of personal property (it cannot be land, etc) by a person expecting to die which is to become effective only on the death of the person making the gift. A person receiving such a gift is treated as acquiring the asset at the time of the donor’s death.

A reference to a person acquiring an asset as legatee, property inherited under a valid will or on an intestacy or partial intestacy or by virtue of the Succession Act, 1965 includes any asset used by the personal representatives to pay any pecuniary legacy or other interest under such will or intestacy or by virtue of the Succession Act, 1965.

“shares” includes stock. Where shares or debentures exist in a letter of allotment or similar document they are to be treated as issued unless the right to the shares expressed in the letter remains provisional until accepted and there has been no acceptance.

“unit trust” is a trust which allows for the beneficiaries under the trust to participate in profits or income arising from investments to the extent that the beneficiaries hold the units into which the beneficial interests in the assets subject to the trusts are divided.

In the Income Tax Acts —

- references to a man, married man or husband is to be taken as references to a woman, married woman or a wife, as the case may be, and vice versa, and
 - provisions relating to the tax treatment of a husband or wife are to be taken in such a way as to give effect to this section.
- (1A)

Construction

References to a married woman living with her husband or a civil partner living with his or her civil partner are to be construed in accordance with the income tax rules for treating a wife as living with her husband as set out in *section 1015(2)* or *section 1031A(2)*, as the case may be. For this purpose, the reference in *section 1015(2)* to a wife is to be treated as a reference to a married woman. (2)

Where, for the purpose of setting up a charge to capital gains tax, assets are treated as sold and immediately reacquired, it is not to be assumed that any expenditure was incurred on such sale or reacquisition. (3)

6 Construction of references to child in Tax Acts and Capital Gains Tax Acts

Summary

This section provides a rule for the construction of references to “child” in the Tax Acts and the Capital Gains Tax Acts. A reference to a child (including a reference to a son or a daughter) is to be taken as including a stepchild and a legally adopted child. This rule applies unless the contrary intention appears in a provision.

Details

References to a child (either son or daughter) include references to — (a)

- a stepchild, and
- a child who is adopted under an adoption order (within the meaning of section 3(1) of the Adoption Act 2010) or the subject of an inter-country adoption effected outside the State and recognised under that Act.

A child so adopted has the same relationship as a child born in lawful wedlock and all relationships which the adopted child had before that child was adopted are to be treated as having ceased. (b)

7 Application to certain taxing statutes of Age of Majority Act, 1985

The Age of Majority Act, 1985 provided in section 2(1) that with effect from 1 March, 1985 the age of majority was reduced from 21 years to 18 years, or earlier where a person marries before 18 years of age. The Age of Majority Act, 1985 also provided in section 2(2) that, in the absence of a definition or an indication to the contrary, for the purposes of any rule of law terms such as “age of majority”, “full-age”, “infancy”, “infant”, “minor”, “minority” and other cognate words and expressions in any statutory provision passed or made before, on or after 1 March, 1985, are to be construed in accordance with section 2(1) of that Act. Section 2(3) of the Age of Majority Act, 1985 provides for references to the age of 21 years in any statutory provision passed or made

before 1 March, 1985 to be deemed to be references to full age (that is, 18 years or earlier where a person marries before 18).

Originally the Income Tax Acts and any other statutory provision dealing with the imposition, repeal, remission, alteration or regulation of any tax or other duty under the care and management of the Revenue Commissioners were excluded from the application of the Age of Majority Act, 1985 by virtue of section 2(4)(b)(vii) of that Act. This exclusion was terminated by the Finance Act, 1986 with effect from 6 April, 1986, except in the case of personal income tax reliefs for widowed parents and other single parents (now *section 462B*) and incapacitated children (now *section 465*) where a reference to age 21 years was retained so as to preserve entitlement to these reliefs for certain persons. *Section 7* merely reaffirms this position.

8 Construction of certain taxing statutes in accordance with Status of Children Act, 1987

This section applies to certain taxation statutes the principle set out in section 3 of the Status of Children Act, 1987, namely, that relationships between persons are determined without regard to whether the parents of any person are or have been married to each other. This principle applies unless the contrary intention appears in legislation. The taxes to which *section 8* applies are income tax, corporation tax, capital gains tax, capital acquisition tax and stamp duties.

9 Subsidiaries

Summary

This section defines “51 per cent subsidiary”, “75 per cent subsidiary”, “90 per cent subsidiary” and “wholly-owned subsidiary” for the purposes of the Tax Acts. In addition, the section provides rules for determining for the purposes of these definitions the amount of share capital of one company which is owned by another company where that other company does not directly own the share capital of the first company. The section also defines what is meant by a series of companies.

Details

Subsidiaries

A company is treated as — (1)

- a 51 per cent subsidiary of another company if more than 50 per cent of its ordinary share capital is owned directly or indirectly by that other company,
- a 75 per cent subsidiary of another company if not less than 75 per cent of its ordinary share capital is owned directly or indirectly by that other company,
- a 90 per cent subsidiary of another company if not less than 90 per cent of its ordinary share capital is directly owned by that other company,
- a wholly-owned subsidiary of another company if 100 per cent of its ordinary share capital is directly owned by that other company.

Direct and indirect ownership

“owned directly or indirectly” means — (2)

- direct ownership,
- ownership through an intermediate company or intermediate companies, or

Ownership is construed as beneficial ownership. (3)

Determination of ownership of ordinary share capital

The amount of ordinary share capital of one company owned by a second company through another company or companies or partly so owned is determined by the application of the following rules. (4)

Where company A directly owns ordinary share capital of company B and company B directly owns ordinary share capital of company C, then, company A is treated as owning ordinary share capital of company C through company B. (5)

Where company C, in turn, directly owns ordinary share capital of company D, then, company A is treated as owning ordinary share capital of company D through companies B and C, and company B is treated as owning ordinary share capital of company D through company C. This look through procedure applies for any number of companies where the ordinary share capital is owned in a similar sequence.

A chain of companies having direct ownership of ordinary share capital in such a sequence form what is known as a “series” if there are 3 or more companies in the sequence. Any 3 or more companies which have direct ownership of ordinary share capital in such a sequence can form a series. (6)(a)

The first company in a series which owns ordinary share capital of another company in the series through the remaining companies in the series is known as “the first owner”. The company in which the first owner owns ordinary share capital through the remaining companies in the series is known as “the last owned company”. The intervening company or companies are known as an “intermediary” or “a chain of intermediaries”. (6)(b)

A company in a series which directly owns ordinary share capital of another company in the series is known as an “owner”. (6)(c)

Any 2 companies in a series where one company directly owns ordinary share capital in the other company (and not through other companies in the series) are referred to as being directly related to one another. (6)(d)

Example

6 companies are related by shareholdings as follows —

A directly owns shares in B,

B directly owns shares in C,

C directly owns shares in D,

D directly owns shares in E,

E directly owns shares in F.

ABCDE and F form a series as do ABCDE, ABCD, ABC, BCDEF, BCDE, BCD, CDEF, CDE and DEF.

ACDEF, ACDE, ACD, ADEF, ADF, etc are not a series.

In the series A to F, company A is the first owner, company F is the last owned company and companies B to E form a chain of intermediaries, each of the companies A to E is an owner, and company A is directly related to company B, and company B is directly related to company C, and so on through the series

Where the first company in a series owns the whole of the ordinary share capital of the (7)

second company in the series and the second company is directly related to the first company (that is, the ordinary share capital is owned directly) and the second company owns the whole of the ordinary share capital of a third company in the series and the third company is directly related to the second company and so on right through the series, then, the first company is treated as owning through the intermediary – or chain of intermediaries – the whole of the ordinary share capital of the last company in the series.

Where one company in a series owns a fraction of the ordinary share capital of the company to which it is directly related (that is, the ordinary share capital is owned directly) and every other company in the series owns the whole of the ordinary share capital of the company in the series to which it is directly related, then, the first company is treated as owning through the intermediary (if there is only one other company in the series), or chain of intermediaries (if there is more than one other company in the series), the same fraction of the ordinary share capital of the last company in the series. **(8)**

Where each of 2 or more owners in a series owns a fraction of the ordinary share capital of the company in the series to which it is directly related (that is, the ordinary share capital is owned directly and not through other companies in the series) and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, then, the fractions owned by those 2 or more companies are multiplied and the resulting fraction is the fraction of the ordinary share capital of the last owned company which the first owner is treated as owning through the intermediary or chain of intermediaries.

Where every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related, the fractions owned by each owner are multiplied and the resulting fraction is the fraction of the ordinary share capital of the last owned company which the first owner is treated as owning through the intermediary or chain of intermediaries. **(9)(b)**

Example

In a series —

A owns 90 per cent of the ordinary share capital of B

B owns 90 per cent of the ordinary share capital of C

C owns 90 per cent of the ordinary share capital of D.

$$\frac{9}{10} \times \frac{9}{10} \times \frac{9}{10} \text{ of D} = \frac{729}{1,000}$$

that is, A owns 72.9 per cent of D.

Therefore, D is a 51 per cent subsidiary of A but would not be a 75 per cent subsidiary of A.

If in the above example A owned directly the remaining 10 per cent of the ordinary share capital of D, A would then own in all 82.9 per cent of D and, thus, D would qualify as a 75 per cent subsidiary of A but not as a 90 per cent subsidiary of A.

Aggregation

Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in the series through an intermediary (or chain of intermediaries) and also owns another fraction of that ordinary share capital either — **(10)**

- directly,
- through an intermediary which is not a member of the series or through intermediaries which are not members of the series,
- through a chain or chains of intermediaries of which one or more or all are not members of the series, or
- (where the series consists of more than 3 companies) through an intermediary or intermediaries which is a member or are members of the series or through a chain or chains of intermediaries consisting of only some of the companies which make up the chain of intermediaries in the series,

then, the fractions are aggregated so as to determine the portion of the last owned company owned by the first owner.

Example

Companies A, B, C and D constitute a series. Company D is wholly owned by company C which in turn is owned three-fourths by company B and one-fourth by company A. Company B is wholly owned by company A.

Through companies B and C, company A owns three-fourths of company D. Through company C only, company A owns one-fourth of company D. The fractions are aggregated and as a result company A is treated as owning all the ordinary share capital of company D.

10 Connected persons

Summary

This section provides the rules for deciding whether one person is connected with another person for the purposes of the Tax Acts and the Capital Gains Tax Acts. The section applies for those purposes except where the context otherwise requires.

Details

Definitions

“close company” is defined by reference to *sections 430* (meaning of “close company”) (*1*) and *431* (certain companies with quoted shares not to be close companies).

“company” has the same meaning as it has in the Corporation Tax Acts and as is set out in *section 4(1)*.

“control” is to be construed in accordance with *section 432* (meaning of “associated company” and “control”).

For the purposes of the Tax Acts, “relative” is a brother, sister, ancestor (that is, grandparent, great-grandparent, etc) and lineal descendants (that is, children, grandchildren, etc). For the purposes of the Capital Gains Tax Acts, “relative” in addition to the preceding persons also includes an uncle, aunt, niece and nephew.

“settlement” is defined in very broad terms as including any disposition, trust, covenant, agreement or arrangement and also any transfer of money or other forms of property or of any right to money or other forms of property.

“settlor” is the person who either directly or indirectly makes or enters into the settlement, and includes a person —

- who either directly or indirectly may have provided or undertaken to provide funds for the settlement, or

- who enters into a reciprocal arrangement with another person for that other person to make or enter into a settlement.

Connected persons

Where a rule provides that one person is connected with another person, this is to be taken as meaning that the converse also applies, namely, that the other person is connected with the first person. (2)

The following persons are connected — (3)

- an individual and his/her spouse,
- an individual and his/her civil partner,
- an individual and a relative of the individual,
- an individual and a relative of the individual’s spouse,
- an individual and a relative of the individual’s civil partner,
- an individual and the spouse of a relative of the individual,
- an individual and the civil partner of a relative of the individual,
- an individual and the spouse of a relative of the individual’s spouse,
- an individual and the civil partner of a relative of the individual’s civil partner,
- a trustee of a settlement and the settlor of the settlement (if the settlor is an individual), (4)(a)
- a trustee of a settlement and any person who is connected with the settlor of the settlement (if the settlor is an individual), (4)(b)
- a trustee of a settlement and a body corporate which at any time in any accounting period or year of assessment is a close company (including a company which would be a close company except for the fact that it is not resident in the State) the participators in which include the trustees of the settlement or a beneficiary under the settlement, (4)(c)
- a person and a business partner of the person (except where partnership assets are bought or sold under bona fide commercial arrangements), (5)
- a person and the spouse or civil partner of a business partner of the person (except where partnership assets are bought or sold under bona fide commercial arrangements),
- a person and a relative of a business partner of the person (except where partnership assets are bought or sold under bona fide commercial arrangements),
- a company and another company where the same person has control of both companies, (6)(a)
- a company and another company where a person has control of one company and persons connected with that person or that person and persons connected with that person have control of the other company,
- a company and another company where a group of 2 or more persons has control of each company and the groups consist of the same persons or could be regarded as consisting of the same persons if a member of either group was replaced by a person connected with that member, (6)(b)

- a company and a person where the person has control of the company or the person and persons connected with the person control the company. (7)

The members of a group of 2 or more persons who act together to obtain control of, or a holding in, a company are (in relation to that company) treated as connected with one another. The group members are also treated as connected with any person acting on the direction of any member of the group to obtain control of, or a holding in, the company. (8)

11 Meaning of “control” in certain contexts

This section defines “control” for the purposes of, and subject to, the provisions of the Corporation Tax Acts which specifically apply the definition. In other words, if the definition is to apply for a particular provision of those Acts, the provision must state that it so applies (either with or without modification). The definition has two aspects; one applies in relation to a company and the other in relation to a partnership.

In the case of a company, “control” is the ability of a person to direct that the affairs of the company are conducted in accordance with the wishes of that person. This ability may be evidenced by the person’s holding of shares or possession of voting rights in the company or any other company or by the existence of any powers conferred by the constitution, articles of association or other document regulating the company or any other company.

In the case of a partnership, “control” is the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.