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## Distributions

### Part 06-02-02

This document should be read in conjunction with Part 6, Part 13 and Part 33 of the Taxes Consolidation Act 1997

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## 1 Overview

UK companies will continue to be within the ambit of section 130(2)(iv) and 130(3) of the Taxes Consolidation Act 1997 following the withdrawal of the UK from the European Union by virtue of the amendment made by section 51 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020.

1. The definition of “distributions” is in sections 130-135 and 436-437 and ss.2 (b) of section 816, Taxes Consolidation Act 1997 (TCA).

Sections 130-135 contain the general definition (paragraph 2 et seq.) and sections 436-437 contain the extended meaning for close companies.

Section 816(2)(b) provides that, where a shareholder in a resident quoted company receives a scrip dividend, an amount equal to the amount that they would have received, if they had opted to receive a cash dividend, is treated as a distribution made by the company.

Unless otherwise indicated, references to distributions are references to distributions of a company resident in the State.

**There are four main categories in the general definition** – these are dealt with separately.

- (a) distributions in respect of “shares” (see paragraph 5) in a company;
- (b) distributions in respect of “securities” (see paragraph 9) of a company;
- (c) certain transfers of assets and liabilities between a company and its members;
- (d)
  - (i) certain bonus issues of shares following a repayment of share capital and
  - (ii) certain bonus issues of shares following a repayment of share capital

### **Consequences of an item being treated as a distribution**

Firstly, the amount treated as a distribution is subject to income tax under Schedule F; it might otherwise not have been subject to tax at all, e.g. in the case of the transfer of an asset at undervalue by a company to one of its members or might have been taxable in a different way, e.g. interest treated as a distribution which would otherwise normally have been taxed under Schedule D Case III.

Secondly, the amount treated as a distribution is not deductible for the purposes of computing income for corporation tax purposes.

Thirdly, when a company makes a ‘relevant distribution’ it must deduct dividend withholding tax.

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Finally, it should be noted that any item treated as a distribution is generally not taxable where the recipient is a company.<sup>1</sup>

2. If a company is being wound up, there can be no distributions **in respect of share capital**, but there can still be distributions under (b) and (c) of paragraph 1 (or under section 436 or section 437). The normal pro rata distribution to shareholders on a winding-up of the net assets of a company (or their proceeds) is, however, not a distribution for the purposes of sections 130 et seq., TCA 1997, notwithstanding that the net assets may include the accumulated net profits of the company. Such a distribution is a “capital distribution” for the purposes of section 583 TCA 1997.

3. Broadly speaking, section 130, excludes from liability any part of a distribution in respect of which new consideration has been received by the company. Furthermore, both sections 131 and 132 refer to the issue of share capital otherwise than by the receipt of new consideration. There are several references in sections 130 et seq., to “new consideration”. “New consideration” is defined as consideration not provided, directly or indirectly, out of assets of the company [section 135(1)(a)]. For this purpose, consideration is treated as provided out of assets of the company if the cost falls on the company. The definition makes it clear that a capitalisation of profits is not new consideration. Normally, there is “new consideration” only when cash is paid, or assets are transferred, to a company in exchange for shares, securities or assets.

Sub-paragraph (b) of Section 135 (1) ensures that, unless the premium has previously been taken into account in deciding that a return on shares represents a repayment of share capital and not a distribution (see paragraph 7), share capital paid up out of a share premium account (itself representing new consideration) is treated as issued for new consideration.

Section 135(2), TCA 1997, provides that no consideration derived from the value of any share capital or security of a company or from voting or other rights in a company is to be regarded as new consideration received by the company **unless** the consideration consists of:

- (a) money or value received from the company as a distribution within sections 130 et seq., TCA 1997;
- (b) money received from the company as a payment which constitutes a repayment of share capital or of the principal secured by that security for the purposes of sections 130 et seq., TCA 1997; or
- (c) the giving up of the right to that share capital or security on its cancellation, extinguishment or acquisition by the company.

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<sup>1</sup> This treatment formed the basis for what was known as ‘Section 84 lending’ in the 1970s and 1980s - an era of high interest rates - whereby financial institutions could grant loans at a much-reduced interest rate.

Where (b) or (c) applies, the amount to be regarded as new consideration is not to exceed -

- (i) the new consideration received by the company for the issue of the share capital or security in question, or
- (ii) where the share capital constituted a distribution within sections 130 et seq., the nominal value of that share capital.

Section 135(2A) states that any consideration derived from the share capital or security of a close company which is issued to another close company, pursuant to a share for share exchange, is not to be regarded as new consideration received by the other company in so far as it exceeds any new consideration received by the former company for the issue of the said share capital or security.

Where payments constitute a repayment of share capital or of the principal secured by a security for the purposes of sections 130 et seq., - see paragraphs 9 and 25.

4. There are various provisions in the TCA 1997, relating to the distributions of special classes of company, e.g., -

- (a) Section 844, TCA 1997, relating to mutual trading;
- (b) Section 700, TCA 1997, relating to industrial and provident societies.

These provisions are dealt with in the instructions relating to the various classes of companies. There is, in addition, a general provision in section 844(4), that where a company does not carry on and never has carried on -

- (i) a trade, or
- (ii) a business of holding investments,

and is not established for purposes which include the carrying on of a trade or such a business, the provisions of the Corporation Tax Acts and of Schedule F, relating to distributions apply to the distributions of that company only to the extent that the distributions are made out of -

- (A) the profits of the company which are brought into charge to corporation tax; or
- (B) franked investment income.

## 2 Categories of distributions

### Distributions in respect of shares [Section 130(2)(a), (b) and (c)]

5. “Share” is defined in section 135(6) TCA 1997, to include stock and any other interest of a member in a company. It therefore includes for example, the rights of a member in a company limited by guarantee. Distributions cannot arise in respect of share capital in a winding up - see paragraph 2.

Section 135(10) TCA 1997, provides that where sections 130-135 and section 137, apply to anything done “in respect of” a share, they apply not only to anything done to a person as the then holder, or the former holder, of the share, but also to anything done in pursuance of a right granted or offer made in respect of the share. There are three forms of distribution in respect of **shares**, namely -

- (a) **dividends**, see paragraph 6
- (b) **distributions out of assets**, see paragraph 7
- (c) **bonus issues**, see paragraph 8

As regards the prevention of tax avoidance by,

- (i) reciprocal arrangements [section 135(3)], see paragraph 20,
- (ii) groups of companies [section 135(4)], see paragraph 21.

6. Any dividend paid by a company, including a capital dividend, is a distribution. Where, as is normally the case, the dividend is paid in cash, the amount or value is the amount so paid. Where, exceptionally, a dividend is satisfied by the transfer of assets, the book value at which they are transferred is the amount of the dividend, irrespective of the market value of the assets. Any excess of the market value over the book value is, however, a distribution by virtue of section 130(3) - see paragraph 14.

7. Section 130(2)(b) TCA 1997 ensures that anything distributed out of the assets of a company (whether in cash or otherwise), in respect of shares in the company, is a distribution, except so much of it, if any, as -

- (a) represents a repayment of capital on the shares, or
- (b) is, when it is made, equal in amount or value to any new consideration (see paragraph 3) received by the company for the distribution.

Certain transfers of assets (or liabilities) between resident companies, however, are not to be treated as giving rise to a distribution (see paragraph 19). Furthermore, where an amount is not treated as a distribution because of sub-paragraph (b) of section 130(3) - see paragraph 16, it is not to be treated as a distribution under section 130(2)(b).

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Section 132(3) and (4), TCA 1997, provides that a premium paid on the redemption of shares does not rank as a repayment of share capital (and accordingly comes within section 130(2)(b)) unless and to the extent that -

- (i) it was covered by a premium paid (or otherwise met by new consideration) on the issue of the shares; and
- (ii) the share premium account arising there from had not been used in paying up other shares (see paragraph 3).

In practice, it is unusual for distributions out of the assets of a company in respect of shares to be other than dividends, repayments of capital or premiums on redemption; any exceptions normally involve a transfer of assets to members and are dealt with under section 130(3) - see paragraph 14. Where a repayment of share capital or premium on redemption is affected by the transfer of assets of the company, any excess of the market value of the assets over the value at which they are transferred should be regarded as a distribution within section 130(3), TCA 1997.

### 3 Bonus Issues

8. Section 130(2)(c), TCA 1997, deals with the situation where a company makes, and later redeems, a bonus issue, or a rights issue with a bonus element, of debentures or loan stock or other securities. It provides that any amount met out of assets of the company (see paragraph 3) (whether in cash or otherwise) in respect of the **redemption** of any security previously issued by the company in respect of -

- (a) shares in the company - for this purpose, "share" includes stock, and any other interest of a member in a company [section 135(6)], or
- (b) securities of the company,

otherwise than wholly for new consideration, or such part of any such issue as is not properly referable to new consideration, is to be treated as a distribution at the time of redemption. For this purpose, the paying-up of any issued share capital is regarded as the issue of share capital. As regards -

- (i) "new consideration", see paragraph 3
- (ii) "security", see paragraph 9

The "amount or value" of any distribution in the form of redemption of a bonus issue of securities is the excess of the principal amount secured including any premium payable at maturity or in a winding-up or in any other circumstances over any new consideration received. Accordingly, the redemption of a rights issue of securities does not give rise to a distribution unless and to the extent that the issue contained a bonus element, i.e., the amount in cash or market value of the new consideration was less than the principal amount in the preceding sentence.

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## 4 Distributions in respect of securities [section 130(2)(d)]

9. Distributions in respect of securities consist of:
- (a) the redemption of bonus issues of securities (see paragraph 8), and
  - (b) matters which fall to be treated as distributions under section 130 (2)(d) TCA 1997.

In general, section 130(2)(d) is aimed at attempts to withdraw profits from companies in the guise of interest (whether annual or "short") on securities. A distribution is any interest or

other payment or provision out of assets of a company (e.g., a premium on repayment) in respect of the five types of security in (a) - (e) of paragraph 12, except so much, if any, as represents the principal secured.

No amount is to be regarded as representing the principal secured in so far as it exceeds any "new consideration" which was received by the company for the issue of the security unless section 135 (9) TCA 1997 applies - see below.<sup>2</sup>

Any such interest, etc., on bonus securities within section 130(2)(c) is a distribution.

Section 135(9) ensures that where securities are issued at a discount or are repayable at a premium and are not quoted on a recognised stock exchange, then unless the securities are issued on terms reasonably comparable with the terms of issue of quoted securities, the principal secured is not to be taken to exceed the issue price.<sup>3</sup>

Section 135(10), which deals with what is to be regarded as done "in respect of" shares, applies to securities as it does to shares.

As regards the prevention of tax avoidance by,

- (A) reciprocal arrangements [section 135 (3)] - see paragraph 20,
- (B) groups of companies [section 135(4)] - see paragraph 21.

10. Section 135(8), TCA 1997, provides that for the purposes of sections 130-135 and section 137 "security" includes;

- (a) securities not creating or evidencing a charge on assets, and

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<sup>2</sup> Where, on repayment of securities, the company claims that section 135 (9), applies to prohibit the repayment being treated as a distribution by virtue of section 130(2)(d), the case should be referred to RLS.

<sup>3</sup> Any case, where claimed that, the terms of issue of unquoted securities are reasonably comparable with those of quoted securities, should be referred to RLS.

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(b) interest paid by a company on (or other consideration given for the use of) money advanced without the issue of a security for the advance shall be treated as if paid (or given) in respect of a security for the advance.

Any loan capital (whether secured or not) is therefore capable of being a security and the interest on an unsecured loan, or a premium on its repayment, could be a distribution, e.g. under (c) of paragraph 12.

11. A distribution in respect of securities within section 130(2)(d), TCA 1997, is normally in cash, and the “amount or value” is accordingly the amount of the payment.

12. The types of security referred to at paragraph 9 (and section 130(2)(d)) are;

(a) Securities issued on or after 27th November 1975, as mentioned in section 130(2)(c) i.e. bonus issues of securities in respect of shares or securities. If there is a rights issue of securities (in respect of shares or securities) with a bonus element, a proportionate part of any interest, etc., should be regarded as a distribution within section 130(2)(d)(i). The balance might be within section 130(2)(d)(ii)-(iv).

(b) Securities convertible directly or indirectly into shares in the company and securities carrying any right to receive shares in or securities of the company, which (in either case) are not quoted securities nor issued on terms reasonably comparable with the terms of issue of quoted securities.

(c) Securities under which the consideration given by the company for the use or the principal secured -

(i) is to an extent dependent on the results of company's business or any part of it, or

(ii) represents more than a reasonable return for the use of the principal.

If an advance is under (c)(i) above, the whole of the interest, etc., falls to be treated as a distribution. If an advance is under (c)(ii) above, only the **excess** of the interest over a reasonable commercial return is a distribution. However, interest is not treated as a distribution where it is paid on a “ratchet loan” i.e. a loan which provides higher levels of interest where the borrowing company's profits fall and lower levels of interest where the borrowing company's profits rise. These “ratchet loans” are commercial in nature and are not a mechanism to disguise an equity investment as a loan.



(d) Securities issued by a company and held by its parent company or a fellow subsidiary, where the parent or fellow subsidiary is not resident in the State except where 90 per cent or more of the share capital of the issuing company is directly owned by a company resident in the State. The parent/subsidiary relationship is determined in accordance with the definition of "75 per cent subsidiary" in section 9 (1)(b). The treatment of interest payments on this type of security may, however, be affected by the terms of a double taxation agreement. It should be noted that interest is not treated as a distribution where it is paid to a company referred to in subsection (2)(d)(iv) – a company resident in another EU Member State or in the United Kingdom. The option contained in sections 452 and 845A for certain companies to elect for the non-application of section 130(2)(d)(iv) in certain circumstances is retained.

(e) Broadly speaking securities which together with shares make up "combined units" so that it is impossible or disadvantageous for a person to transfer the securities without the shares connected with them.

(f) Any qualifying amount as defined in section 130(2C) which is paid to the beneficiary of an Employee Share Ownership Trust (ESOT) where the ESOT is linked to an Approved Profit-Sharing Scheme (APSS).

**Note:** When interest on a security is a distribution if, and only if, the security comes within (c)(ii) above, and, provided that (i) the consideration for the use of the principal is, or is primarily, interest ("short" or annual), (ii) the interest is paid regularly, and (iii) substantially the whole of the interest is paid to a company or companies which are resident in the State and within the charge to corporation tax (**i.e. not to individuals whether resident or non-resident nor to non-resident companies nor to resident but exempt companies**), and which treat the interest as income within the charge to corporation tax, a broad view is to be taken of what is a "reasonable commercial return". If the same conditions are satisfied, a similar view should be taken (for the purpose of determining whether an unquoted security is within (b) above) on whether, or not the terms of issue are reasonably comparable with those of quoted securities.

13. Loan interest which would fall to be treated as a distribution by virtue of subparagraphs (ii), (iii)(i) and (v) of section 130 (2) (d) shall not be so treated by virtue of section 133 **subject to certain exceptions**. Thus, interest on so-called "section 84", loans where the interest by virtue of the above provisions would otherwise fall to be treated as a distribution and thus would not be liable to corporation tax in the hands of, for example, an Irish bank which granted the loan, is not to be so treated.

## 5 Transfers of assets and liabilities [section 130(3)]

14. Section 130(3), TCA 1997, provides that where on a transfer of assets or liabilities -

- (a) by a company to its members, or
- (b) to a company by its members,

the amount or value of the benefit received by the member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by the member, the company is to be treated as making a distribution to the member of an amount equal to the difference. See, however, paragraph 16 as regards transfers between associated companies. Furthermore, certain **transfers of assets** (or liabilities) between resident companies are not to be treated as giving rise to a distribution - see paragraph 19.

The provision regulates certain situations in which distributions in kind are made to members (for example, assets transferred at book value in satisfaction of dividends or share capital repayments). It also applies, when any bargain or arrangement is made between a company and any one or more of its members at other than arm's length terms and the bargain, etc., results in a reduction of the worth of the company to the advantage of the member or members.

15. Section 130(3), TCA 1997, is, in part, an anti-avoidance provision against attempts to withdraw funds from a company otherwise than through its share capital or securities. It applies, however, only to transactions between a company and a member or members of the company. Any case where there are transactions not at market value to the disadvantage of a company such that -

- (a) in the case of a transaction with a member, section 130(3) appears to be ineffective (and no other provision of sections 130-137 or 430, 431 or 436, TCA 1997, applies), or
- (b) in the case of a transaction with a non-member, the non-member receives an advantage which, if he were a member, would be a distribution (for transactions between associated companies, see paragraph 16) or
- (c) although the transaction is with a non-member, the advantage arises (whether directly or indirectly or through a chain of operations) to the benefit of -
  - (i) an individual who is a member, or
  - (ii) an individual who is not a member but has an indirect interest in the company (e.g. as a member of its parent company), or
  - (iii) any relative, business associate, etc., of individuals within (i) or (ii), or
  - (iv) any trusts set up by individuals within (i), (ii) or (iii),

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should be reported to RLS. A report is not required if the advantage derived from the company ranks as a distribution under some other provision e.g., under section 436 - which relates to close companies.

Section 135(3A) provides that where arrangements are entered into by a member of a close company whereby shares or securities are disposed of by a member and the consideration for the disposal is met out of the assets of the company, then any amount received by the member from another close company in respect of the disposal is to be treated as a distribution.

16. Where on a transfer of assets or liabilities the member is a company and
- (a) both the conferring and the receiving companies are resident in the State, and
  - (b) the company conferring the benefit is a subsidiary of the company receiving the benefit or both companies are subsidiaries of a third company also resident in the State,

the amount of the benefit is not to be treated as a distribution under section 130(3) - paragraph (b) of the subsection. In deciding whether a company is a subsidiary for this purpose section 130(4) applies, i.e. the same rules as for section 410, but with the additional restriction that any share capital owned directly by a company is to be left out of account if a profit on the sale of the shares would be treated as a trading receipt of that company. Where in accordance with the above an amount is not to be treated as a distribution, it is not to be treated as a distribution under section 130(2)(b) - see paragraph 7.

In cases not within the preceding sub-paragraph, a broad view should be taken of market value where the only material taxation question involved is the amount, if any, of a distribution under section 130(3) and -

- (i) the relevant transaction is between two companies, resident in the State,
- (ii) there are no associated operations,
- (iii) the underlying ownership of the two companies is substantially the same, and
- (iv) there are no changes in the shareholding in, or underlying ownership of, either company material to the transaction.

Further, if the four conditions in (i) - (iv) above are satisfied in the case of a transaction not at market value between a company and a non-member (e.g. a transfer of an asset by a parent to its subsidiary at below market price), a report under (b) of paragraph 15 above need not normally be made.

17. A transfer of an asset or liability not at market value to, or by, a company may affect the corporation tax liability of the company (and have tax consequences for the other party) whether or not the transfer gives rise to a distribution within section 130(3) e.g. disposals of stock-in-trade, otherwise than in the course of trade, which are affected by the principles of **Sharkey v. Wernher, 1955, 36 T.C. 275**, as extended by **Petrotim Securities Ltd. v. Ayres, 1963, 41 T.C. 389**.

A transaction between a company and a member which is to the member's advantage may therefore give rise both to corporation tax liability on the company (on the amount of the advantage) and, where the member is not a company within the charge to corporation tax, to income tax liability on the income represented by the distribution (to which the advantage gives rise under section 130(3)). This, however, accords with the normal rule that a company pays corporation tax on its profits with no deduction for the distributions it makes and its shareholders bear income tax on the income represented by the distributions.

If, for example, a company worth €100,000 transfers stock-in-trade worth €10,000 to a member for €4,000, the company is then worth €94,000 and it has effectively distributed €6,000 to the member. The **Sharkey v. Wernher** adjustment ensures that the company pays corporation tax on its true profits, and section 130(3) ensures that the €6,000 which the shareholder has effectively withdrawn is income in the shareholder's hands.

18. If a company transfers a realisable asset at below its market value to an employee or director in consideration of his services, then the difference between the market value and the transfer price is normally assessable under schedule E on the employee or director. In such circumstances, if the employee or director is also a member, section 130(3) should be regarded as inapplicable; the difference should not be treated as a distribution. In such a case, the deduction to be made in the company's Case I or Case II computation is the excess, if any, of the **cost** of the asset over the transfer price but only to the extent that this cost has not already been allowed as a deduction or as capital allowances. No deduction can be given for the excess of the market value over the transfer price even though such excess is treated as an emolument of the employee or director.<sup>4</sup>

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<sup>4</sup> Lowry v. Consolidated African Selection Trust Ltd., 1940, 23 T.C. 259

19. If the transfer is made by way of compensation for loss of office, etc., the transfer should similarly not be regarded as giving rise to a distribution. Any appropriate Schedule E liability should be pursued.

It is a question of fact whether the person to be assessed acquired the asset at an advantageous price as a reward for services. Where the director or employee receiving such an advantage is also a shareholder and it proves impossible to demonstrate that the motive for the transaction was a desire to reward services (and, therefore, that the advantage is taxable under Schedule E), it may be possible to show that the transfer of the asset was made to the director, etc., as a shareholder in the company. If this can be demonstrated section 130(3) can be applied.<sup>5</sup>

If other shareholders have been offered similar transfers and have not waived them, they will be chargeable, however difficulties may arise in applying section 130(3) unless other shareholders have received or have waived their rights to similar advantages.

Where it is not possible to assess the advantage under Schedule E and the company contends that section 130(3) does not apply, the case should be submitted to RLS before any claim to liability under section 130(3) is abandoned.

20. Section 130(5), TCA 1997, provides that the transfer of assets (or liabilities) to another company at less than market price is not to be regarded as a distribution under section 130(2)(b) or section 130(3) where all the following conditions are satisfied (see paragraphs 7 and 14 respectively);

- (a) the assets transferred are not cash,
- (b) both companies are resident in the State;
- (c) neither of the companies is a 51 per cent subsidiary of a company not resident in the State and
- (d) The companies are not under common control either at the time of the transfer or as a result of it.

A "51 per cent subsidiary" is defined in section 9(1)(a), TCA 1997, as one in which more than 50 per cent of the ordinary share capital [section 2(1)] is owned directly or indirectly by the other company concerned.

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<sup>5</sup> Section 436(3)(a) - extended meaning of distributions for close companies - does not impose liability in these circumstances.

21. Section 135(3) TCA 1997 is designed to prevent avoidance of tax by two or more companies entering into arrangements to make distributions to each other's members.

Where such arrangements exist, all the parties concerned may for all the purposes of Chapter 2 of Part 6 of TCA 1997, be treated as if anything done by one company had been done by the other. The provisions also apply where more companies participate in the arrangements.

Thus, for example, if Company A and Company B enter into arrangements whereby, in effect, Company A makes payments to Company B's members (equivalent to the dividend Company B would have paid) and Company B makes payments to Company A's members (equivalent to the dividend Company A would have paid), section 135(3) enables Revenue to treat the payments as distributions.

22. Section 135(4), TCA 1997, is aimed at preventing avoidance of sections 130 et seq. by a company, in a 90 per cent group, making a distribution out of its assets in respect of shares in another member of the same group. It provides that;

(a) the expressions "in respect of shares in a company" and "in respect of securities of a company" (paragraph 1) in relation to a company which is a member of a 90 per cent group, mean respectively in respect of shares or securities of that company or any other company in the group,

(b) "distribution" in relation to a company which is a member of a 90 per cent group includes anything distributed out of the assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

A principal company (i.e., a company of which another company is a subsidiary) and all its 90 per cent subsidiaries form a "90 per cent group". A "90 per cent subsidiary" is defined in section 9(1)(c) TCA 1997, as one in which 90 per cent of the ordinary share capital [section 2(1)] is **directly** owned by another company.

If, for example, the parent of a 90 per cent group undertakes to acquire the preference shares in one of its subsidiaries at a substantial premium, section 130 (2) (d) can be applied. An exception is allowed where a subsidiary, acting as manager of a life assurance fund, acquires shares in its holding company. In that case any premium paid over the issue price of the holding company shares will **not** be treated as a distribution of profits to the shareholders in the holding company [Section 135 (4) (e)].

## 6 Bonus issue of shares following repayment of share capital [section 131]

23. Section 131, TCA 1997, provides that where a company -
- (a) repays any share capital (other than certain preference shares - see paragraph 23) on or after 27th November 1975, and
  - (b) at or after the time of that repayment issues as paid-up otherwise than by the receipt of new consideration (see paragraph 3) any share capital

the amount so paid up is to be treated as a distribution made in respect of the shares on which it is paid up. For this purpose, the paying up of issued share capital is regarded as an issue of share capital.

The amount or value of the distribution should be treated as the nominal amount of the bonus issue less the amount in cash or market value of any new consideration received (up to the amount of the repayment), and less any amounts already treated as distributions (in respect of the same repayment) by virtue of section 131(1).

The rule applies to **any** subsequent bonus issue of share capital, whether, or not that capital is of the same class as the share capital repaid.

### Example

A company repays share capital of €250,000. Subsequently, it makes an issue of 125,000 fully paid €1 ordinary shares at 40 cent a share and later a bonus issue of 500,000 fully paid €1 preference shares (no new consideration).

The first issue would be treated as a distribution of the amount or value of €75,000 (125,000 x 60 cent) and the second one of €175,000 (€250,000 - €75,000).

A repayment of share capital is normally in cash but need not necessarily be so. Where the repayment is made by the transfer of assets, any excess of the market value of the assets transferred over the value at which they are transferred would be a distribution by virtue of section 130(3) - see paragraph 14.

24. Section 131(1) TCA 1997 does not apply where the shares repaid were -
- (a) fully paid preference shares in issue at 27th November 1975 which continued to be fully paid preference shares from that date until their repayment; or
  - (b) preference shares which have been issued after 27th November 1975, as fully paid preference shares wholly for new consideration (provided that the new consideration was not "derived from ordinary shares") and have continued to be fully paid preference shares from their issue until their repayment.

**"Preference shares"** are defined as shares which

- (i) do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed; and
- (ii) carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on a stock exchange in the State.

**Consideration "derived from ordinary shares"** is consideration consisting of:

- (A) the surrender, transfer or cancellation of ordinary shares whether of the company issuing the preference shares or any other company; or
- (B) the variation of rights in ordinary shares of the company or any other company; or
- (C) consideration derived from a repayment of share capital paid in respect of ordinary shares of the company or any other company.

25. Section 131 does not apply to a case where -

- (a) the company issuing the share capital is not a close company within the meaning of section 430, TCA 1997; and
- (b) the issue of share capital -
  - (i) is of share capital other than redeemable share capital; and
  - (ii) takes place more than ten years after the repayment of share capital.

## 7 Repayment of share capital following a bonus issue [section 132]

26. Section 132, TCA 1997, deals with the situation where a bonus issue has been made on or after 27th November 1975, and, later there is a repayment of share capital.

The general rule in section 130(2)(b) is that a repayment of share capital is not a distribution. Section 132 modifies this by providing that if the share capital repaid was issued as paid up otherwise than by the receipt of "new consideration" on or after 27th November 1975, the repayment is not to be treated as a repayment of share capital and hence, by virtue of section 130(2)(b) is to be treated as a distribution.

The paying up of issued capital is regarded as the issue of share capital.

To the extent that the bonus issue fell to be treated as a distribution at the time of issue e.g., under section 130(2)(c) or 131(1), section 132, does not operate. Where there is a partial repayment, section 132(2), ensures that the bonus element is regarded as repaid in priority to amounts paid up for new consideration.



For the purposes of section 132, all shares of the same class are to be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares are to be treated as the same share capital. Thus, if there is a bonus issue of ordinary shares to preference shareholders, a repayment of the preference shares could, for the purposes of section 132 be regarded as a repayment of the bonus issue.

Section 132(1), TCA 1997, makes appropriate provision for successive repayments of the capital of a bonus issue.

Section 132(3) and (4) provide that a premium paid on the redemption of shares does not rank as a repayment of share capital (and, accordingly, comes within section 130(2)(b)) **unless** and to the extent that -

- (a) it was covered by a premium paid (or otherwise met by new consideration) on the issue of the shares; and
- (b) the share premium account arising therefrom had not been used in paying up other shares.

27. Section 132, TCA 1997, does not apply to a case where -

- (a) the company is not a close company (within meaning of section 430) and
- (b) the bonus shares were not redeemable shares; and
- (c) the repayment takes place more than ten years after the bonus issue.

## 8 Disallowance of reliefs in respect of bonus issues [section 137]

28. Summary

Where the profits of a company are stripped by means of a distribution which is, or arises out of, an issue of bonus shares or the repayment of a security (that is, matters which are treated as a distribution under paragraph (c) or (d) of section 130(2) or section 131 or 132(2)(a)) then, except in so far as any recipient of such a distribution receives a normal return on his/her investment, no account is taken of such a distribution for the purpose of any exemptions, reliefs or offsets.

### Application

This section applies to matters (referred to as a “bonus issue”) treated as distributions by virtue of being—

the redemption of bonus issues, and certain interest which is in the nature of

- a distribution (paragraph (c) or (d) of section 130(2)),
- a bonus issue following the repayment of share capital (section 131),
- a payment in repayment of share capital following a bonus issue (section 132(2)(a)).

**Restriction**

A bonus issue is, subject to subsection (5), not to be taken into account for any claim for recovery of tax based on any exemption from tax, the setting-off of losses against profits or income, or the payment of interest.

**Franked investment income**

A bonus issue is, subject to subsection (5), not treated as franked investment income (that is, income of a company which consists of a distribution) for the purposes of any reliefs available against franked investment income. (See section 156 for the meaning of franked investment income).

**Abatement of restrictions**

Excluded from the scope of the preceding provisions is the proportion (if any) of any bonus issue made in respect of any shares or securities which, if the bonus issue were declared a dividend, would represent a normal return on the consideration provided by the recipient for the shares or securities in respect of which the bonus issue was made. If the securities derive from shares or securities previously acquired by the recipient, the normal return is to be related to the earlier acquisition.

**Market value**

For the purpose of subsection (5), the recipient is taken to have acquired the shares or securities at their market value at the date of acquisition. This applies irrespective of whether the consideration (if any) for the shares or securities was, at the time of acquisition, in excess or below their market value. In determining whether an amount received by way of dividend exceeds a normal return, regard is to be had to the length of time between the receipt of that amount and the time when the recipient first acquired any of the relevant shares or securities. Regard is also to be had to any dividends or other distributions made in respect of them during that period.

**Other useful links:**

Section 135 is dealt with in Tax and Duty Manual [Part 06-02-05](#).