

Quoted company – Acquisition of its Own Shares

Part 06-09-02

This document should be read in conjunction with section 175 of the Taxes Consolidation Act 1997

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Executive Summary

This manual outlines the provisions in section 175 of the Taxes Consolidation Act 1997, whereby the acquisition by a quoted company of its own shares is not treated as a distribution. Shareholders are therefore subject to capital gains tax, rather than income tax, on the disposal of their shares.

The section includes an anti-avoidance provision making the above treatment conditional on the share acquisition not being a tax avoidance arrangement with the primary aim of remunerating shareholders from company profits without the payment of a dividend.

The manual outlines other provisions in section 175 and for illustrative purposes includes examples of the types of issues concerning shares in this context.

1. Details

Payments made by a **quoted company** on the redemption, repayment or purchase of its own shares is not treated as a distribution under section 175 TCA 1997. This means that such payments are not subject to dividend withholding tax - payable by the company or income tax - payable by the shareholder. Instead, shareholders are subject to capital gains tax on the disposal of their shares.

Example

A company purchases its own ordinary shares, at the current market price, through a stock exchange using a broker.

2. Anti-Avoidance

The treatment outlined above is conditional on the share buy-back not being a tax avoidance arrangement with the primary aim of distributing profits to shareholders by means other than a dividend payment.¹

The purpose of the condition in section 175(1), applying to quoted companies, is to curb the use of share buy-back schemes which are set up to remunerate shareholders from company profits without the payment of a dividend, principally with a view to avoiding a charge to income tax.

A share scheme arrangement put in place whereby the quoted company decides to make a return of value to shareholders, giving a choice to a shareholder to take a payment out of company profits by way of dividend **or** by way of share redemption, could not satisfy the condition in section 175. Such an arrangement can only be viewed as a scheme or arrangement the main purpose or one of the main purposes of which is to enable the owner of the shares to participate in the profits of the company without receiving a dividend.

Other issues that may occur at or around the time of the implementation of the optional share scheme, such as a reorganisation of the ordinary share capital of the company, will not be factors that would influence the application of the condition.

Other transactions where the condition in section 175(1) would not be satisfied include the following: (this is not an exhaustive list)

- The issue of bonus shares for little or no consideration and the subsequent re-purchase of those shares by the company out of its distributable profits.

¹ A provision inserted into section 175 TCA by Section 34 Finance Act 2010

- Shares that are issued solely with the objective of being redeemed at a profit to the shareholder from the profits of a company, particularly where the shares will be redeemed shortly, if not immediately, after they are issued.
- Shares that are issued for a small or nil consideration where it is intended in advance to redeem them for a much larger consideration from the profits of a company.
- Shares which if they are not redeemed by the owner, automatically convert into another type of share/s that have no economic or other rights in real terms.
- Shares which are issued on terms where they can be redeemed by the issuing company for little or no value if a shareholder opts to take a dividend rather than redeem the shares from the profits of a company.
- Redeemable shares that are issued on terms so that they are not transferable.

3. Other Information

Quoted companies must notify the Revenue Commissioners of any share buy-backs undertaken in an accounting period indicating whether the buy-back is being treated as **not being** a distribution.

The application of section 175 to a share redemption, repayment, or purchase by a quoted company of its own shares will be subject to self-assessment by the company.

There is no requirement to obtain clearance in advance from Revenue in relation to the treatment of share buy-backs.

In exceptional situations where there may be some uncertainty or doubt as to the appropriate treatment of a proposed transaction, it should be possible for the relevant case manager in Revenue, on receipt of all the relevant information, to express a view as to whether the transaction in question gives rise to an income distribution. Such a view would be qualified on the basis that the position in relation to any proposed transaction can only be known with certainty after the events have taken place and the facts are established.