

# **Illustrative Examples of Close Company Provisions**

## **Part 13-02-02**

This document should be read in conjunction with sections 430 to 441 of the Taxes Consolidation Act 1997

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## Executive Summary

This manual contains examples which illustrate whether a company is a close company or otherwise. Each of the examples relate to a company having shares which are **not** dealt in or quoted on a stock exchange.

(See Tax and Duty Manual [Part 13-01-02](#) for more detailed explanations).

### Example 1

Company X Ltd. has 1,000 issued shares of €1 held as follows -

The two trustees of A's settlement .....	449
Mrs. A .....	60
Ten other shareholders .....	<u>491</u>
Total issued ordinary shares .....	1,000

The ten other shareholders are not associated with A, Mrs. A or each other. Mrs. A and the two trustees of A's settlement are associated and therefore the one composite person controls the company [section 433(3) TCA].

**The company is a close company.**

### Example 2

The €1 issued shares in a company are owned as follows (no shareholder is a nominee or associate of any other shareholder) -

<u>Ordinary Shares</u>		
Director A	4	
Director B	4	
12 individuals	<u>4,992</u>	
Total issued Ordinary Shares		5,000
<u>5 per cent Preference Shares</u>		
Director A		<u>5,000</u>
Total Nominal and Issued Capital		10,000

**The company is a close company** because Director A possesses more than half of the share capital whether issued or not [section 432(2)(a) TCA].

### Example 3

The issued ordinary shares in a company carry one vote each but the “A” ordinary shares do not confer voting rights. The shareholders are as follows -

	Ordinary	“A” ordinary
Director A	280	
Wife of A	100	
B (brother of A, and director)	10	
Trustees of A’s settlement	40	
X Ltd (controlled by A)	<u>80</u>	
	510	
Mrs. C (director) (daughter of B)	20	
10 other equal holdings - total	<u>470</u>	<u>500</u>
Total issued shares	1,000	500

The shares carry equal rights to a dividend. A’s wife has made a loan of €20,000 to the company at 15% p.a. interest. There is no share premium (or comparable) account.

The associates of A [under section 433(3) TCA] are:

- (i) his wife and his brother, and
- (ii) the trustees of A’s settlement.

The rights and powers attributable to A [under section 432(6) TCA] are:

- (A) the rights and powers of his associates, and
- (B) the rights and powers of X Ltd.

Therefore, as a total 510 **votes** are possessed by A or attributable to him, **the company is a close company** controlled by one composite person - control by voting rights [section 432(2)(a) TCA].

The loan interest paid to Mrs. A is to be treated under the provisions of section 437(3) and (4) which have application because -

- (A) the company is closely controlled,
- (B) A’s wife is an associate of A, and
- (C) A is a director who has a material interest in the company.

Therefore, the interest treated as a distribution (and not allowed as a deduction in arriving at the corporation tax profits for the accounting period) would be the **excess** of interest paid **over** 13% per annum of 1,500 (1,500 being the lesser amount of loans on which company paid interest and issued share capital - section 437(6) TCA refers).

For an accounting period of 12 months, the limit would be €195 (13% of €1,500) and for an accounting period of six months, the limit would be €98 (6/12 x 13% of €1,500).

## Example 4

The authorised and issued share capital of X Ltd. is €1,000 in the form of 1,000 ordinary shares of €1 each, held as follows -

A	200
B	100
C	50
D	50
E	40
Y Ltd	99
"Other shareholders"	<u>461</u>
Total issued ordinary shares	1,000

A works as a manager in X Ltd. and B and C are directors.

The issued capital of Y Ltd. is €100 in the form of 100 ordinary shares of €1 each, held by:

F (son of E)	60
G	40

The shareholders in X Ltd., other than Y Ltd., are all individuals and none are related or otherwise associated. No "other shareholder" holds more than 50 shares.

**Control** - The rights in the shares held by Y Ltd. in X Ltd. may be attributed to F who controls that company. F is an associate of E, but the rights attributed to F cannot be **further** attributed to E [section 432(6) TCA refers]. No group of five persons or fewer can control X Ltd - neither the directors nor the participators control it.

**Therefore X Ltd. is not a close company** (see variation in example 5 below).

## Example 5

The facts are the same as in Example 4 except that F is the holder of one share in X Ltd. and is thereby a participator in X Ltd. and B, C and F are directors of X Ltd.

**Control** - Rights can be attributed to F as follows -

Shares held in own right	1
Shares held by E (an associate)	40
Shares held by Y Ltd. (controlled by F)	<u>99</u>
	140

Thus A, B, C, D and F hold (or have attributed to them) the rights in 540 shares and control X Ltd – The company **is a close company in this scenario.**

## Example 6

The authorised and issued share capital of X Ltd. is as in Example 4 but is held as follows -

A	1
B (brother of A)	100
C (son of A)	100
D	100
E	50
F	50
G	50
H	50
"Other shareholders"	<u>499</u>
Total issued ordinary shares	1,000

A works as a manager but is not a director in name. B, C, D, E, F, G and H are directors of X Ltd. Rights attributed to A are as follows -

Shares held in his own right	1
Shares held by B (an associate)	100
Shares held by C (an associate)	<u>100</u>
Total shares attributed to A	201

Therefore A, with his associates, controls 20% of the ordinary shares and being a manager of the company is also considered a "director" [section 433(4)(c) TCA].

**Control** - the company is not controlled by five or fewer participators, however, the shares held by "participators" who are directors, including the shares attributed to A above are as follows -

Rights of participators who are directors

Shares held by (or attributed to) A	201
Shares held by D	100
Shares held by E	50
Shares held by F	50
Shares held by G	50
Shares held by H	<u>50</u>
	501

Therefore, the company is controlled by "participators" who are directors, regardless of their number and **is a close company** [section 430(1) TCA].

## Example 7

A company has authorised capital of €4,500 in €1 ordinary shares, of which €3,000 is issued as follows -

A	150
B	150
C	150
D	250
E	250
F	250
20 other shareholders (no one holder having over 100 shares)	<u>1,800</u>
Total issued ordinary shares	3,000

The 20 other shareholders are individuals and none of them are associates.

A, B, and C are directors. They each enter into a service agreement providing that they are to remain directors for five years from 1 January 2024 and that on 31 December 2028 they shall each have the right to purchase 500 €1 shares in the company at par.

**Control** - A, B and C are each entitled to acquire rights in 650 shares (total at a future date). Therefore A, B, C, D and E together constitute a group which is "able to exercise or is entitled to acquire control" of the company with 2,450 shares out of 4,500 [section 432(2),(3) and (4) TCA].

**The company is a close company** (from 1 January 2024).

## Example 8

The authorised and issued capital of an investment holding company is 33,000 and is owned equally by 11 individuals who are not associated – 2 of them are directors, including A.

There are two loan creditors as follows -

A (director and shareholder) – loan of €35,000 at 16% p.a. interest

B (not a shareholder) - loan of €13,500 at 14% p.a. interest

Neither A nor B is a banker. B is not an associate of a director. In a winding-up the value of the net assets distributable among members, including loan creditors, would be €120,000 as follows –

		€
Deposits with finance houses, etc.		30,000
Market value of quoted investments (represents the remainder of the assets)		<u>110,000</u>
		140,000
Deduct:		
Sundry creditors for management expenses	300	
Bank overdraft	<u>19,700</u>	<u>(20,000)</u>
Value of net assets		120,000

**Control** – In the first instance, the company cannot be shown to be controlled by five or fewer participators. However, in a liquidation, the assets would be distributed as follows –

A as loan creditor	35,000
B as loan creditor	13,500
11 shareholders (€6,500 each)	<u>71,500</u>
	120,000

**More than half**, €61,500, of the distributed amount **would be received by three persons** i.e.

1. A - €41,500 (35,000 as a loan creditor + 6,500 as a shareholder)
2. B - €13,500 (as a loan creditor)
3. One shareholder – €6,500 (other than A)

**The company is therefore a close company** – loan creditors are included as participators under s433(1)(b), and the control criteria is satisfied under s432(2)(c).

Interest paid is dealt with as follows [under section 437] -

- The excess of the loan interest paid to A (a director) over a sum equal to interest at 13% per annum is a distribution.



- The loan interest paid to B (a participator but not a director or a director's associate) is not a distribution.

## Example 9

The issued ordinary capital of a trading company is held as follows -

A Ltd. (not a close company)	280
B. Ltd. (a close company)	270
C Ltd. (not a close company)	230
D (director)	40
E (director)	30
F (an individual, not a director)	30
20 others	<u>120</u>
Total issued ordinary shares	1,000

**Control** - Section 430(4)(a) provides criteria where a company shall not be a close company and the provisions are satisfied in this circumstance as follows -

- upon one combination of shareholdings, control is in the hands of A Ltd. and C Ltd., **and**
- it cannot be treated as a close company except by taking either A Ltd. or C Ltd. as one of five or fewer participators requisite for being a close company.

**The company is not a close company** (see variation in example 10 below).

## Example 10

The ordinary shares are held as in Example 9 – other than G, an individual, holding redeemable loan stock and who would receive in a winding-up more than half the assets available for distribution among the participators.

**Control** - as G is in control of the company by reference to section 432(2)(c), the requirements of section 430(4)(a) are not met and, irrespective of the ownership of the ordinary shares, **the company is a close company.**