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.

Please also refer to Tax and Duty Manual Part 13-01-02 for detailed explanations of these provisions.

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	491
Total issued ordinary shares	1,000

The ten shareholders are not associated with A, Mrs. A or with 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);

Ordinary Shares

Director A..................................	4	
Director B..................................	4	
12 individuals	4992	
Total issued Ordinary Shares.................		5,000

5 per cent Preference Shares

Director A.......................................	5,000
Total Nominal and Issued Capital	10,000

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

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)	80	
	510	
Mrs. C (director) (daughter of B)	20	
10 other equal holdings - total	470	500
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 are:

(i) his wife and his brother

(ii) the trustees of A’s settlement

(iii) The rights and powers attributable to A 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 i.e. control by voting rights [section 432(2)(a) TCA].

Also, 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 (1500 being the lesser amount of loans on which company paid interest and issued share capital - section 437(6) refers).

For an accounting period of 12 months, the limit would be 13% of €1,500 i.e. €195. For an accounting period of six months it would be 6/12 x 13% of €1,500 i.e. €98.

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"	461
Total issued ordinary shares	1,000

A is works manager 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) 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)	99
	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"	499
Total issued ordinary shares	1,000

A is the works manager but 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)	100
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	50
	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)	1,800
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 2014 and that on 31 December 2018 they shall each have the right to purchase 500 €1 shares in the company at par.

Control - A, B and C are entitled to acquire rights in 650 shares albeit 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 2014).

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.

There are two loan creditors as follows;

A (director) - €35,000 at 16 %

B (not a shareholder) - €13,500 at 14 %

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 (representing the remainder of the assets)	110,000
	140,000

Deduct sundry creditors for management expenses	300	
Bank overdraft	19,700	20,000
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 loan creditor	13,500
Shareholders (€6,500 each)	71,500
	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 + 6,500)
2. B - €13,500 (not a shareholder)
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 control criteria is satisfied under s432(2)(c).

Interest paid is dealt with as follows;

- 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)	30
20 others	120
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 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.**