

Certain Settlements made by Close Companies

Part 13-02-07

This document should be read in conjunction with section 436A of the Taxes Consolidation Act 1997

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Introduction

This manual outlines the provisions in section 436A of the Taxes Consolidation Act 1997 and how they apply to the transfer of funds from close companies using trusts and other such settlements.

1 Background

The purpose of the section is to counter attempts to transfer funds from close companies on a tax-free basis to shareholders or family members using trusts and other such settlements.

The section deters such attempts by providing that where a close company transfers money or money's worth under a settlement set up by the company for the benefit, or potentially for the benefit, of a shareholder or family member the transfer is deemed to be a distribution by the company to the trustees of the settlement. This means that the company is required to deduct dividend withholding tax of 25 per cent of the amount settled under the trust. Furthermore, where funds settled by a close company on a trust are subsequently distributed from the trust, the section provides that the shareholders or family members to whom such funds are transferred will be chargeable to income tax at the marginal rate on amounts received.

The provisions apply to funds transferred on or after 21 January 2011 (as inserted by section 29 of the Finance Act 2011).

2 Overview of subsections

2.1 Section 436A (1)

This subsection provides definitions for 'member', 'relative', 'relevant settlement' and 'settlement'.

A 'relevant settlement', in relation to a close company, is any settlement (within the meaning of section 10 of the TCA)¹ made by or on behalf of the close company other than a settlement made for the exclusive benefit of a person or persons who is not a member of the company or a relative of such member and which does not allow for the provision of any benefit to such member or relative.

The subsection also provides that any participator, being a member of a company, which controls another company shall be treated as also being a participator in and a member of that other company.

2.2 Section 436A (2)

This subsection provides that any amount in money or money's worth settled by a close company on or after 21 January 2011 in connection with a relevant settlement shall be treated as a distribution by the company to the trustees of the settlement.

2.3 Section 436A (3)

This subsection provides that where an individual who is or was a member of a close company, or a relative, receives directly or indirectly an amount in money or money's worth from assets comprised in a relevant settlement in relation to the close company, so much of the amount as exceeds any consideration given by the individual, or relative, will be chargeable to Income Tax under Case IV of Schedule D.

2.4 Section 436A (4)

This subsection makes provision for the section not to apply where it is demonstrated that the settlement was not made for tax avoidance purposes.

¹ Under section 10 TCA, 'settlement' includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property.