

## 1 Share exchanges involving non-UK incorporated close companies

- (1) TCGA 1992 is amended in accordance with subsections (2) and (3).
- (2) After section 138 (exchange of securities and schemes of reconstruction: procedure for clearance in advance) insert—

### “138ZA Share exchanges involving non-UK incorporated close companies

- (1) Section 138ZB applies where—
  - (a) section 135 or 136 applies to an issue by a company (“company B”) of shares in or debentures of that company (“the exchanged shares or debentures”) in exchange for or in respect of shares in or debentures of another company (“company A”),
  - (b) immediately before the issue is made, company A is a close company which is incorporated in the United Kingdom (whether or not it is resident in the United Kingdom),
  - (c) immediately after the issue is made, company B is a close company which is not incorporated in the United Kingdom (whether or not it is resident in the United Kingdom), and
  - (d) the person to whom the exchanged shares or debentures are issued (“P”) is an individual who meets the conditions in subsection (2).
- (2) Those conditions are that—
  - (a) immediately before the issue is made, P—
    - (i) has a material interest in company A, and
    - (ii) is a participator in company A, and
  - (b) immediately after the issue is made, P—
    - (i) has a material interest in company B, and
    - (ii) is a participator in company B.
- (3) P has a material interest in a company for the purposes of this section if condition A or B is met.
- (4) Condition A is that P, an associate of P, or P or an associate of P together with one or more associates is—
  - (a) the beneficial owner of, or
  - (b) directly or indirectly able to control,more than 5% of the ordinary share capital of the company.
- (5) Condition B is that P, an associate of P, or P or an associate of P together with one or more associates possesses or is entitled to acquire such rights as would—
  - (a) in the event of the winding up of the company, or
  - (b) in any other circumstances,give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.

- (6) Chapter 2 of Part 10 of CTA 2010 (meaning of “close company” and related terms) applies for the purposes of this section but with the omission of section 442(a) (exclusion of non-UK resident companies).
- (7) In relation to a company that has no share capital, this section applies as if—
  - (a) references to shares in, or debentures of, the company included any interests of the company possessed by members of the company, and
  - (b) the reference in subsection (4) to the ordinary share capital of the company were to all such interests.

### **138ZB Treatment of securities connected with such exchanges**

- (1) Where this section applies (see section 138ZA), a security mentioned in subsection (2) is to be treated for the purposes of this Act as situated in the United Kingdom (whether or not it would otherwise be so treated) if—
  - (a) it is held by P, other than as a result of a disposal of the security by P’s spouse or civil partner (“S”) to P to which section 58 (no loss or gain on disposals between spouses or civil partners) did not apply, or
  - (b) is held by S, other than as a result of a disposal of the security by P to S to which that section did not apply.
- (2) Those securities are—
  - (a) the exchanged shares or debentures;
  - (b) a security issued to P or S in exchange for all or part of the exchanged shares or debentures where section 135 or 136 applies to that issue;
  - (c) a security issued to P or S in exchange for a security mentioned in paragraph (b) where section 135 or 136 applies to that issue;
  - (d) a security of company B acquired by P or S on or after the day on which the exchanged shares or debentures are issued;
  - (e) a security acquired by P or S which is required by section 105(1) (disposal of shares and other unidentified assets) to be identified with a security mentioned in any of paragraphs (a) to (d) of this subsection;
  - (f) a security acquired by P or S which is required by section 106A(5) (identification of securities for capital gains tax) to be identified with a security mentioned in any of those paragraphs;
  - (g) where there is a repo (within the meaning of section 263A) in respect of a security mentioned in any of those paragraphs, any similar security (see section 263AA(5) and (6)) that P or S, or a person connected with P or S, buys back under the repo;
  - (h) where P or S transfers a security mentioned in any of those paragraphs to another person under a stock lending arrangement (within the meaning of section 263B), any security

of a similar description (see section 263B(6)) transferred back to P or S under the arrangement.

- (3) For the purposes of paragraphs (b) and (d) of subsection (2), it does not matter whether or not—
- (a) consideration was given for the security acquired by P or S, or
  - (b) the security acquired by P or S is of a different class from the exchanged shares or debentures.
- (4) In this section—
- “company B”, “P” and “the exchanged shares or debentures” are to be construed in accordance with section 138ZA;
  - “security”, in relation to a company means—
    - (a) shares in, or debentures of, the company, or
    - (b) in relation to a company that has no share capital, any interests of the company possessed by members of the company.

#### **138ZC Election to disapply section 135 or 136**

- (1) This section applies where section 138ZB would, but for an election under this section, apply in relation to the issue by a company of shares in or debentures of that company in exchange for, or in respect of, shares in or debentures of another company
- (2) The person to whom the shares or debentures are issued may elect for section 135 or 136 not to apply to the issue, and accordingly—
- (a) the exchange or scheme of reconstruction in question will not be treated as a reorganisation within the meaning of section 126, and
  - (b) section 138ZB will not apply in relation to the issue.
- (3) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the shares or debentures are issued.”
- (3) In section 288 (interpretation), in the definition of “close company”, at the end insert “(subject to section 138ZA(6))”.
- (4) The amendments made by subsections (2) and (3) have effect in relation to an issue of shares or debentures made on or after 17 November 2022.
- (5) In section 830 of ITTOIA 2005 (meaning of “relevant foreign income”), after subsection (3) insert—
- “(3A) “Relevant foreign income” does not include income paid in respect of a security, within the meaning of section 138ZB of TCGA 1992, if—
- (a) the security is treated, for the purposes of that Act, as situated in the United Kingdom as a result of section 138ZB of that Act, and

- (b) that section applies in respect of the security as a result of an issue of shares in or debentures of a company in exchange for, or in respect of, shares in or debentures of another company that is incorporated, and is resident, in the United Kingdom.”
- (6) The amendment made by subsection (5) is treated as having come into force on 17 November 2022.