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## 18 Distributions in a winding up

- (1) In Chapter 3 of Part 4 of ITTOIA 2005 (dividends and other distributions from UK resident companies), after section 396A insert –

### “396B Distributions in a winding up

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in the winding up of a UK resident company is a distribution of the company if –
    - (a) Conditions A to C are met, and
    - (b) the distribution is not excluded (see subsection (6)).
  - (2) Condition A is that the company –
    - (a) is a close company when it is wound up, or
    - (b) was a close company at any time in the period of two years ending with the start of the winding up.
  - (3) Condition B is that, at any time within a period of two years beginning with the date on which the distribution is made –
    - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company,
    - (b) the individual, or a person connected with him or her, is a participator in a company which at that time –
      - (i) carries on such a trade or activity, or
      - (ii) is connected with a company which carries on such a trade or activity, or
    - (c) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
  - (4) Condition C is that it is reasonable to assume, having regard to all the circumstances, that –
    - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
    - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
  - (5) The circumstances referred to in subsection (4) include in particular the fact that Condition B is met.
  - (6) A distribution to an individual is excluded if or to the extent that –
    - (a) it represents a repayment of an amount of share capital originally subscribed, or
    - (b) the distribution is a distribution of irredeemable shares in a company which is an effective 51% subsidiary of the company which is wound up.
  - (7) Section 170(7) of TCGA 1992 (meaning of effective 51% subsidiary) applies for the purposes of subsection (6)(b).
  - (8) In subsection (3)(b), “participator” has the meaning given by section 454 of CTA 2010.”
- (2) In Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), after section 404 insert –

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#### **“404A Distributions in a winding up**

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in a winding up of a non-UK resident company is a dividend of the company if –
    - (a) Conditions A to C are met, and
    - (b) the distribution is not excluded (see subsection (6)).
  - (2) Condition A is that the company –
    - (a) is a close company when it is wound up, or
    - (b) was a close company at any time in the period of two years ending with the start of the winding up.
  - (3) Condition B is that, at any time within a period of two years beginning with the date on which the distribution is made –
    - (a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company,
    - (b) the individual, or a person connected with him or her, is a participator in a company which at that time –
      - (i) carries on such a trade or activity, or
      - (ii) is connected with a company which carries on such a trade or activity, or
    - (c) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.
  - (4) Condition C is that it is reasonable to assume, having regard to all the circumstances, that –
    - (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
    - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
  - (5) The circumstances referred to in subsection (4) include in particular the fact that Condition B is met.
  - (6) A distribution to an individual is excluded if or to the extent that –
    - (a) it represents a repayment of an amount of share capital originally subscribed, or
    - (b) the distribution is a distribution of irredeemable shares in a company which is an effective 51% subsidiary of the company which is wound up.
  - (7) Section 170(7) of TCGA 1992 (meaning of effective 51% subsidiary) applies for the purposes of subsection (5)(c).
  - (8) In this section –

“close company” includes a company which would be a close company if it were a UK resident company;

“participator” has the meaning given by section 454 of CTA 2010.”
- (3) The amendments made by this section have effect in relation to distributions made on or after 6 April 2016.