

# Corporation Tax: Distributions in the Form of Assets and Liabilities

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## Who is likely to be affected?

Companies resident in the UK which transfer value, assets or liabilities (other than cash) between them when one company is a member of (usually a shareholder in) the other company.

## General description of the measure

This measure will ensure that the tax treatment of a transfer of an asset or liability is not determined by the country of residence of the participants in the transaction. This measure will ensure that the transfer of assets and liabilities between UK resident companies can be treated as a distribution for the purposes of corporation tax in all cases. A detailed change will also be made to clarify the interface between two overlapping provisions in the distributions rules.

## Policy objective

The measure ensures that the tax treatment of transfers of assets and liabilities between UK resident companies is the same as that which applies to transfers between UK resident and non-UK resident companies.

## Background to the measure

Finance (No.3) Act 2010 amended the tax treatment of company distributions received. In the course of related consultations areas of uncertainty were identified in other parts of the distributions legislation. A joint working group was formed with interested tax professionals in order to clarify points of uncertainty.

At Budget 2011, it was announced that HM Revenue & Customs (HMRC) would identify and resolve the areas of difficulty, including by enacting legislation if necessary.

This measure aligns the tax treatment of transfers of assets irrespective of the territory of residence of the companies involved.

## Detailed proposal

### Operative date

The measure will have effect for transfers of assets and liabilities made on or after the date Finance Bill 2012 receives Royal Assent.

### Current law

The transfer of assets by a company to its members at below the market value, and certain other similar transfers, are treated as distributions under section 1020 Corporation Taxes Act (CTA) 2010 and included within the meaning of distribution for the purposes of the Corporation Taxes Acts by section 1000 (1) paragraph G of CTA 2010.

A transfer of assets can also be a distribution under section 1000 (1) paragraph B of CTA 2010 as being “out of the assets of the company”. This is the case if it is in respect of shares,

providing it does not represent a repayment of capital on shares, and it exceeds the amount of any “new consideration” received for the transfer.

However, legislation at sections 1002 and 1021 CTA 2010 exempt the transaction from treatment as a distribution where both companies are UK resident, and either:

- the distributing company is a 51 per cent subsidiary of the member, or both are 51 per cent subsidiaries of another company that is also UK resident; or,
- the companies are not under common control and neither is a 51 per cent subsidiary of a non-UK resident company.

This means that the tax treatment of transfers of assets between companies differs depending on the residence of the companies concerned.

## Proposed revisions

Legislation will be introduced in Finance Bill 2012 to repeal sections 1002 and 1021 CTA 2010, so that transfers of assets between UK resident companies can be treated as distributions for the purposes of Part 23 CTA 2010.

Also, section 1020 CTA 2010 will be amended so that it applies only to transfers of assets that are not already treated as distributions under section 1000 (1) paragraph B, or would be so treated if paragraph B did not exclude repayments of share capital. This means that the overlap in the scope of section 1000 (1) paragraphs B and G of CTA 2010 is removed.

## Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
This measure is not expected to have an Exchequer impact.					
<b>Economic impact</b>	These changes have no significant economic impacts.				
<b>Impact on individuals and households</b>	No impact on individuals and households because the changes affect companies only.				
<b>Equalities impacts</b>	No impacts on the equality of protected groups as the changes affect companies only.				
<b>Impact on business including civil society organisations</b>	<p>These changes will affect only UK resident companies that transfer assets to other UK resident companies.</p> <p>Any compliance costs will be negligible as the new rules are no more burdensome, involving minor changes to the tax computation only. However, this treatment is generally beneficial for companies as in most cases, it will provide certainty that distributions received will be exempt from corporation tax.</p>				
<b>Operational impact (£m) (HMRC or other)</b>	There will be a small cost to HMRC in updating guidance and instructions.				
<b>Other impacts</b>	<u>Small firms impact test:</u> Small businesses are unlikely to be affected because the measure will primarily impact groups of companies. No other impacts have been identified.				

**Monitoring and evaluation**

This measure will be monitored through information collected from the tax clearances process.

**Further advice**

If you have any questions regarding these changes, please contact Clare Dunne on 020 7147 2657 (email: [clare.e.dunne@hmrc.gsi.gov.uk](mailto:clare.e.dunne@hmrc.gsi.gov.uk)).

## 1 Company distributions

- (1) Part 23 of CTA 2010 (company distributions) is amended as follows.
- (2) Section 1002 (exceptions for certain transfers of assets or liabilities between a company and its members) is repealed.
- (3) In section 1020 (transfers of assets or liabilities treated as distributions) –
  - (a) in subsection (2), omit from “But” to the end, and
  - (b) after that subsection insert –
    - “(2A) But the company is not treated as making a distribution under subsection (2) if the transfer of assets or liabilities –
      - (a) is a distribution by virtue of paragraph B in section 1000(1), or
      - (b) would be such a distribution in the absence of subparagraph (a) of that paragraph (distribution representing repayment of capital on the shares).”
- (4) Section 1021 (transfers of assets or liabilities treated as distributions: exceptions) is repealed.
- (5) In consequence of the repeal made by subsection (2) –
  - (a) omit section 194(2) of CTA 2010,
  - (b) in section 998(3) of that Act, for “1002” substitute “1003”,
  - (c) in section 1001 of that Act, in the third column of the table, omit “Section 1002 (exception for certain transfers of assets and liabilities)”, and
  - (d) omit paragraph 1(2) of Schedule 3 to the Finance (No. 3) Act 2010.
- (6) The amendments made by this section have effect in relation to distributions made on or after the day on which this Act is passed.

**EXPLANATORY NOTE**

**DISTRIBUTIONS IN THE FORM OF TRANSFERS OF ASSETS AND LIABILITIES**

**SUMMARY**

1. This clause provides that certain transactions involving transfers of assets or liabilities between UK resident companies are not excluded from being treated as distributions for the purposes of Corporation Tax, removing an anomaly left over from the repeal of Advance Corporation Tax by Finance Act (FA) 1998.
2. This clause also removes an overlap between different parts of the legislation which define what a distribution is.

**DETAILS OF THE CLAUSE**

3. Subsection (2) repeals section 1002 of the Corporation Tax Act (CTA) 2010. Section 1002 CTA excludes from the definition of distribution in section 1000(1) of CTA 2010, paragraph B (“paragraph B distribution”), transfers of assets or liabilities between:
  - UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; or
  - UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.

Such transfers will now be paragraph B distributions if all other conditions are satisfied.

4. Subsection (3) inserts new subsection (2A) into section 1020 of CTA 2010. New subsection (2A) prevents a transfer of assets or liabilities being treated as a distribution under section 1000(1) of CTA 2010, paragraph G (“paragraph G distribution”), where the transfer is also a distribution under paragraph B, or would be if the exclusion of repayment of capital on the shares within paragraph B did not apply.
5. Subsection (4) repeals section 1021 of CTA 2010. Section 1021 of CTA 2010 provides for exception from treatment as a distribution under paragraph G transfers of assets or liabilities between:

- UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; or
- UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.

Such transfers will now be paragraph G distributions if all other conditions of are satisfied.

6. Subsection (5) makes consequential amendments.
7. Subsection (6) provides that the amendments apply to distributions made on or after the day on which the Finance Bill receives the Royal Assent.

### **BACKGROUND NOTE**

8. Part 23 CTA 2010 covers the meaning of distribution for the purposes of Corporation Tax. This includes:
  - any distribution out of the assets of the company in respect of shares except amounts that represent the repayment of capital on shares, (“paragraph B distribution”) and,
  - a transfer of assets or liabilities by a company to its member, or by a member to the company where the benefit to the member exceeds the consideration given by the member, (“paragraph G distribution”).

Previously, a transfer of assets or liabilities between a company and its members could fall within both paragraph B and paragraph G if all other conditions of those sections were satisfied.

9. This clause will ensure that where the transfer is a paragraph B distribution, or would be if not for the exception for repayment of capital on the shares, it will not be treated as a paragraph G distribution.
10. Sections 1002 and 1021 CTA 2010 excluded from the definition of distribution in paragraph B and paragraph G respectively transfers of assets and liabilities between:
  - UK resident companies neither of which is a 51 per cent subsidiary of a non-resident company and which are not under common control; and

- UK resident companies where one is a 51 per cent subsidiary of the other, or both are 51 per cent subsidiaries of another UK resident company.
11. The predecessor legislation to sections 1002 and 1021 CTA 2010 was introduced to relieve companies from the obligation to account for income tax or (after the imputation system was introduced by FA 1972) Advance Corporation Tax (ACT) on making a distribution in the form of a transfer of an asset or liability to another UK company. Since the abolition of ACT by FA 1998, the legislation is no longer required and is now producing anomalies, with tax treatment depending on the residence of the companies involved.
  12. This legislation will align the tax treatment of transfers between UK resident companies with transfers between UK and non-UK resident companies, by allowing transfers between UK companies to be treated as distributions for the purposes of CTA 2010.
  13. If you have any questions about this change, or comments on the legislation, please contact Clare Dunne on 020 7147 2657 (email: [clare.e.dunne@hmrc.gsi.gov.uk](mailto:clare.e.dunne@hmrc.gsi.gov.uk)).