

Overview of Close Companies

(Objectives, definition, implications, special provisions)

Part 13-01-01

This document should be read in conjunction with sections 430 to 441 of the Taxes Consolidation Act (TCA) 1997

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Executive Summary

A company **controlled** by a small group of persons may refrain from distributing its income or may make disguised distributions to these persons. This type of company is referred to as a 'close' company and is defined in section 430(1) TCA1997.

Part 13 of the TCA is designed to counter the avoidance of income tax at the higher rate on investment and rental income (and certain Case II income). This avoidance can occur when income of close companies is accumulated, rather than distributed to shareholders who would be liable to tax on the receipt of distributions. Part 13 also contains provisions to counter avoidance of tax on loans, advances and other benefits provided by close companies to their shareholders or directors.

These special, legislative provisions are classified below, as well as an outline of the main implications for a close company and its participators/directors on the application of the provisions. A broad description of what constitutes a 'close' company is also included.

1. Implications for a close company and its participators / directors

- Certain benefits-in-kind and expense payments to participators or associates will be treated as distributions [section 436].
- Interest, in excess of a specified rate, paid to directors or their associates will be treated as a distribution [section 437].
- Loans or advances to participators or their associates must be made under deduction of tax and, if the loan is repaid, the grossed-up amount is treated as income in the hands of the recipient [sections 438 and 439].
- A surcharge at the rate of 20% is imposed on the undistributed after-tax investment and estate income of close companies [section 440].
- Close "service" companies are also liable to a surcharge of 15% on one-half of their undistributed trading income [section 441].

2. Special Provisions applying can be classified as follows

- (a) Provisions affecting the computation of profits chargeable to corporation tax.
- (b) Provisions affecting the definition of "distributions" and, therefore, inter alia, the amounts which are deductible as "charges on income" in computing a company's profits chargeable to corporation tax - see Tax and Duty Manual (TDM) [Part 13-02-01](#) [section 437 refers].

- (c) Provisions dealing with loans made by a company to a participator under which a company has to account for income tax, as if the amount of the loan was the after-tax amount of an annual payment - see TDM [Part 13-02-03](#) and TDM [Part 13-02-04](#) [section 438 refers].
- (d) Provisions affecting the tax liability of the person to whom a loan within (c) above is made, if the loan is released or written off, see paragraph 9 of TDM [Part 13-02-03](#) [section 439 refers].
- (e) Provisions imposing a surcharge on certain undistributed income of a company, see TDM [Part 13-02-05](#) [section 440 refers] and TDM [Part 13-02-06](#) [section 441 refers].

The provisions within (a) and (b) above are interconnected as under section 76(5), distributions are not a deduction in computing income from any source and section 243(1) excludes distributions from the definition of charges on income.

Note Where a close company is subject, in the making of distributions, to any restriction, imposed by law, e.g., an Act of The Oireachtas or Statutory Instrument (but not merely a provision in the Articles of Association), regard is to be had to this restriction in determining the amount of income on which a surcharge is to be imposed under section 440 or 441. To the extent that the company could not make distributions out of any income without contravening that restriction, the income is not to be included as "distributable income".

3. Determination of Close Company Status

Subject to certain exceptions, a close company [defined in section 430(1)] is broadly a company which:

- (a) is under the control of five or fewer participators, or of directors who are themselves participators even if they number more than five **or**,
- (b) if on the full distribution of its distributable income, more than half of that income would be paid directly or indirectly to five or fewer participators, or to participators who are directors even if they number more than five.

Most Irish resident companies are 'close' companies. In most cases it will be clear, as to whether, or not, a company is a close company. A company owned by a small number of individuals (or a family company) will usually be a close company while most quoted companies by their nature will be 'open' companies.

See TDM [Part 13-01-02](#) for an outline of the tests to assist in determining whether a company is a close company.

See TDM [Part 13-02-05](#) and TDM [Part 13-02-06](#) for provisions affecting the computation of the profits of a close company, for corporation tax purposes.