

Corporation tax from 1 April 2023 (Lecture B1389 – 18.30 minutes)

HMRC guidance can be found at <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm03900>.

From 1 April 2023, there is a small profit rate of 19% where augmented profits are up to £50,000 and a main rate of 25% where augmented profits are above £250,000 per annum. Augmented profit is taxable profit plus exempt distribution income.

Marginal relief applies to profits in between the two limits. The taxable profit is initially taxed at 25% then reduced by:

$$3/200 \times (\text{Upper profit limit} - \text{augmented profit}) \times \text{taxable profit} \div \text{augmented profit}$$

The marginal rate between £50,000 and £250,000 is 26.5% (higher if company has dividend income), so this is where, for example, optimum loss relief is obtained.

The profit limits are apportioned for short accounting periods and associated companies (see later).

The 25% rate also applies, irrespective of the size of profits, for:

1. Close investment-holding companies (excluding letting land to unconnected 3rd parties);
2. Non-resident companies on their profits from a UK PE or UK property business;
3. UK companies on any chargeable CFC profits.

Associated companies

Two companies are associated if at any time within the preceding 12 months:

- One company has control of the other, or
- Both companies are under the control of the same person or group of persons

As well as affecting the profit limits for determining the rate of corporation tax, this will affect whether a company is large or very large for quarterly instalment purposes, whether a company can elect to use small claims treatment for Patent box, and the £100,000 limit for long-life asset expenditure to be pooled in the 6% pool.

Control (s450 CTA 2010)

Can the person exercise or acquire direct or indirect control over the company's affairs?

This is definitely the case if the person owns or can acquire:

1. more than 50% of share capital, or
2. the majority of the voting rights, or
3. Entitlement to a majority of the distributable profits, or
4. Entitlement to more than 50% of the assets available to participators

This includes where two or more persons satisfy these conditions.

But when attributing rights of others (e.g., associates such as spouse, siblings etc.) companies are only associated if there is substantial commercial interdependence between them.

Substantial commercial interdependences are as defined in Schedule 1 paras 3 - 6, NIC Act 2014 (for employment allowance purposes) as “the degree to which the companies are financially interdependent, economically interdependent and organisationally interdependent”.

Interdependence meanings

Financially interdependent (Sch 1, para 4)

One company gives financial support (directly, or indirectly – e.g., a guarantee) to the other, or each company has a direct or indirect financial interest in the other’s activities.

Economically interdependent (Sch1, para 5)

Both companies seek to realise the same economic objective, or the activities of one benefit the other, or there are common customers.

Organisationally interdependent (Sch 1, para 6)

Common management, employees, premises or equipment.

HMRC Guidance

CTM03950 - “it is not necessary for all three types of links to exist. For example, if there is a sufficient financial link, one company will be an associated company of another even if no economic or organisational links exist”

But the law says, ‘degree to which the companies are financially... economically.....and organisationally interdependent’.

An ordinary reading of this is that all 3 need to be present, but case law will need to evolve to understand if HMRC is correct in its assertion.

HMRC gives examples where it believes there is significant financial interdependence at CTM03785, significant economic interdependence at CTM03790, and organisational interdependence at CTM03795.

This shows the sort of arrangements that HMRC might enquire into, but it is not the law.

Attribution of rights of others

If no substantial commercial interdependence exists between companies, the normal attribution of rights held by certain connected persons (s451 CTA 2010) is ignored.

Each shareholding is considered in isolation.

Husband and wife scenarios

If husband (H) and wife (W) each own (say) 50% of A Ltd and of B Ltd, the two companies are associated as they are under the common control of both H&W (the 'same person or persons'). It takes the combined shareholdings to achieve control in each company.

If H owns 100% of A Ltd and W owns 100% of B Ltd, normally we would attribute H's interest to W and W's interest to H, but A Ltd and B Ltd will only be associated if there is substantial commercial interdependence between them. If they operate separately, they will not be associated.

What if H owns 90% of H Ltd and W owns 10%, W owns 90% of W Ltd and H owns 10%?

We look at smallest group of people that combine to control each company. So, H controls H Ltd without W, W controls W Ltd without H. The two companies will only be associated if there is substantial commercial interdependence.

Effect on quarterly instalments

The £1.5m and £20m limits will be divided by the number of associated companies (rather than 51% groups) for accounting periods beginning from 1 April 2023.

Example 1

Adam Chan owns 100% of AC Properties Limited and 100% of AC Consultancy Limited.

Both companies have made profits in their year ended 31 March 2023 accounts in the region of £1 million to £1.2 million and are expected to do so for the foreseeable future.

Explain when these companies will need to pay their corporation tax over the next 3 years.

Profit limit = $(£1.5m \div 2)$ £750,000, so both must pay QIPs from 2025 (because year ended 31 March 2024 is a period of grace).

Analysis

<u>Accounting period</u>	<u>Payment date(s)</u>
Year ended 31 March 2023	1 Jan 2024
Year ended 31 March 2024 (grace)	1 Jan 2025
Year ended 31 March 2025	14 Oct 2024 (25%) 14 Jan 2025 (25%) 14 Apr 2025 (25%) 14 Jul 2025 (25%)

Example 2

What difference would it make if the companies in example 1 had a December year end?

Year to 31 December 2023 – tax payable 1 October 2024 (AP begins pre 1 April 2023)

Year to 31 December 2024 – first year of instalment regime – period of grace

Year ended 31 December 2025 – QIPs required for first time - instalments payable

1. 14 July 2025
2. 14 October 2025
3. 14 January 2026
4. 14 April 2026

Contributed by Malcolm Greenbaum