

ROWLAND, DEBONO LIMITED

Directors:
Peter M. B. Rowland
John Percival (Res. France)

Associates:
J. G. Senior, OBE (Dubai)
Richard Coulson (Nassau)
John Kitchen, FIB

11, Upper Brook Street
London W1Y 1PB

Tel: 01 - 493 9188/9
01 - 499 5904 (AnsaFone)

Telex: 23143
Cables: Monmachro

PMBR/pw

The Rt. Hon. Margaret Thatcher, M.P.
10 Downing Street,
London S.W.1.

10 May, 1983

Dear Margaret,

Our tax legislation is criticised on all sides for its obscurity and the standard Revenue reply is that nothing can be done.

I have never believed this true, so when Nicholas Ridley repeated the official line a few months ago, I decided to write to him. He asked for illustrations and I re-drafted a passage taken at random from the F.A. 1982.

I enclose my version together with the original for comparison purposes and you will see that the former reads like an Act and uses the same words and expressions but takes up only 2 pages instead of 3½ though nothing has been left out. I believe it to be easier to read as well as shorter, and it could be clearer still with a few changes to the content. I may add that the Acts abound with possibilities for simplification without appreciable prejudice to the taxpayer or the Revenue.

The outcome was predictable - quite negative. The reasons given were the risk of mistakes, lack of Parliamentary time, and doubt whether a different drafting technique would help. There is nothing in the first point since errors would scarcely elude four trained pairs of eyes (half to be produced by the Revenue). Loss of Parliamentary time should be negligible; there are various possibilities such as a small all-Party group of experts to black ball anything controversial. I think the enclosed draft answers the third point.

What I find unclear is why the Revenue is so much against clarification. Vested interests? Amour-propre? A dislike of eating their own words? Whatever it may be, you alone have the authority to test the issue if you wish to by calling on them to cooperate with a tiny Committee to produce a rather larger sample which I think should be the next stage. This need only take a couple of weeks, given goodwill. The whole job would take about a year.

Certainly such a move would be highly popular in the City and the business community generally; and the long term benefits would be hard to exaggerate - a great saving of managerial time and the redeployment into more productive fields of perhaps 5,000 of the ablest accountants and other professionals.

P.S. Now that the date has been announced it is presumably too late to do anything but Nicholas will tell you that it is nearly three months since I broached the subject and I have been trying to push it along ever since! *hon and the very, very best of luck for the 9th from Glen & myself.*

Section 53. Purchase of own shares by unquoted trading company

(1) A payment made on or after 6th April 1982 by an unquoted company which is either a trading company or the holding company of a trading group on the redemption, repayment or purchase of its shares (in this Section and Schedule 9 referred to as "the purchase") shall not be a distribution for the purposes of the Corporation Tax Acts provided that either the conditions set out in sub-sections (2) to (6) are satisfied or sub-section (7) applies.

(2) The purchase must be made wholly or mainly to benefit a trade carried on by the company or any of its 75 per cent subsidiaries and must not form part of a scheme or arrangement a main purpose of which is -

- (a) to enable the owner of the shares (in this Section and Schedule 9 referred to as "the vendor") to enjoy the company's profits without receiving a dividend, or
- (b) the avoidance of tax.

(3) The vendor and, if the shares are held through a nominee, the nominee, must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and for this purpose -

- (a) The residence and ordinary residence of personal representatives shall be taken as those of the deceased at his death and in the case of trustees shall be determined by applying Section 52 of the Capital Gains Act 1979.
- (b) References to ordinary residence shall be disregarded in the case of a company.

(4) The vendor must have owned the shares throughout the five years ending with the purchase - or three years where sub-section (5) applies - but if they were transferred to him by his spouse when they were living together, and they are living together at the time of the purchase (or the spouse is dead), the spouse's period of ownership shall be treated as the vendor's.

(5) Where the vendor acquired the shares under the will or on the intestacy of a deceased owner, or as personal representative of a deceased owner, the period of ownership of the deceased (and of his personal representative if other than the vendor) shall be treated as the vendor's.

(6) The purchase must substantially reduce the vendor's interest as provided by Schedule 9 to this Act, and the identification and other supplementary provisions of that Schedule shall also have effect.

(7) A payment falling within sub-section (1) is not a distribution if, after allowing for any capital gains tax paid in respect of the purchase, the payment is wholly or substantially applied within two years of a death in discharging a

capital transfer tax liability of the payee's charged on that death, but this sub-section shall not apply to the extent that the liability could have been discharged without undue hardship otherwise than through the purchase or a similar purchase by that or another company within sub-section (1).

SCHEDULE 9

Section 53. PURCHASE OF OWN SHARES BY UNQUOTED TRADING COMPANY

1. In applying sub-sections (4) and (5), shares other than those allotted for payment, or comprising capital to which Section 34 of the Finance (No. 2) Act 1975 (stock dividends) applies, and which for capital gains tax purposes would be identified with earlier holdings under Chapter II of Part IV of the Capital Gains Tax Act 1979 (reorganisation of share capital, conversion of securities etc.) shall be so identified. Subject thereto, shares acquired earlier shall be taken into account before shares acquired later and disposals shall be on a last in first out basis.

2.- (1) The condition that the vendor's interest must be substantially reduced shall not be satisfied unless the percentage of the company's issued share capital which he owned immediately before the purchase, and also the percentage of the company's notional profits to which he would have been entitled on a full distribution immediately before the purchase, have been reduced by at least one quarter.

- (2) For the purposes of this paragraph;

- (a) A person entitled to periodic profit distributions based on fixed rates or amounts shall be regarded as entitled to the maximum payable for one year;
- (b) A company's notional profits shall comprise the aggregate of;
 - (i) the sum of £100;
 - (ii) the total amounts to which persons are entitled under sub-paragraph (a); and
 - (iii) the "profits available for distribution" for the purpose of Part III of the Companies Act 1980 or, in calculating the notional profits before the purchase, the total payable by the company on the purchase and any contemporaneous purchase if greater.

- (3) References in this paragraph to entitlement are references to beneficial entitlement except in the case of trustees and personal representatives.

3. If immediately after the purchase any associate of the vendor owns shares of the company the combined interests of the vendor and his associates must have been substantially reduced and the provisions of paragraph 2 shall be applied as though the vendor's interest included those of this associates.

53. Purchase of own shares by unquoted trading company

(1) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if -

- (a) the company is an unquoted company and either a trading company or the holding company of a trading group; and
- (b) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 75 per cent. subsidiaries, and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is -
 - (i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or
 - (ii) the avoidance of tax; and
- (c) the conditions in paragraphs 1 to 9 of Schedule 9 to this Act, so far as applicable, are satisfied in relation to the owner of the shares.

(2) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if -

- (a) the company is within subsection (1) (a) above, and
- (b) the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) is applied by the person to whom it is made in discharging a liability of his for capital transfer tax charged on a death, and is so applied within the period of two years after the death;

but this subsection shall not apply to the extent that the liability could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of shares in the company or another company within subsection (1) (a) above.

(3) Schedule 9 to this Act shall have effect for supplementing this section; and in that Schedule "the purchase" means the redemption, repayment or purchase referred to in subsection (1) above, and "the vendor" means the owner of the shares at the time it is made.

(4) This section has effect in relation to payments made on or after 6th April 1982.

SCHEDULE 9

PURCHASE OF OWN SHARES BY UNQUOTED TRADING COMPANY

Conditions for application of section 53 (1)

- 1.-(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.
 - (2) The residence and ordinary residence of trustees shall be determined for the purposes of this paragraph as they are determined under section 52 of the Capital Gains Tax Act 1979 for the purposes of that Act.
 - (3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this paragraph to be the same as the residence and ordinary residence of the deceased immediately before his death.
 - (4) The references in this paragraph to a person's ordinary residence shall be disregarded in the case of a company.
- 2.-(1) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.
 - (2) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse living with him then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse living with him, any period during which the shares were owned by that person shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor.
 - (3) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner -
 - (a) any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor, and
 - (b) that sub-paragraph shall have effect as if it referred to three years instead of five.
 - (4) Where the vendor is a personal representative of a deceased owner -
 - (a) any period during which the shares were owned by the deceased shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor, and
 - (b) that sub-paragraph shall have effect as if it referred to three years instead of five.
 - (5) In determining whether the condition in this paragraph is satisfied in a case where the vendor acquired shares of the same class at different times -

- (a) shares acquired earlier shall be taken into account before shares later, and
- (b) any previous disposal by him of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

(6) If for the purposes of capital gains tax the time when shares were acquired would be determined under any provision of Chapter II of Part IV of the Capital Gains Tax Act 1979 (reorganisation of share capital, conversion of securities etc.) then, subject to sub-paragraph (7) below, it shall be determined in the same way for the purposes of this paragraph.

(7) Sub-paragraph (6) above shall not apply to shares allotted for payment or comprised in share capital to which section 34 of the Finance (No 2) Act 1975 (stock dividends) applies.

3.-(1) If immediately after the purchase the vendor owns shares of the company, then, subject to paragraph 9 below, his interest as a shareholder must be substantially reduced.

(2) Subject to sub-paragraph (3) below the vendor's interest as a shareholder shall be taken to be substantially reduced if and only if the total nominal value of the shares owned by him immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time, does not exceed 75 per cent. of the corresponding fraction immediately before the purchase.

(3) The vendor's interest as a shareholder shall not be taken to be substantially reduced where -

- (a) he would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and
- (b) that share, expressed as a fraction of the total of those profits, exceeds 75 per cent. of the corresponding fraction immediately before the purchase.

(4) In determining for the purposes of sub-paragraph (3) above the division of profits among the persons entitled to them, a person entitled to periodic distribution calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which he would be entitled for a year.

(5) In sub-paragraph (3) above "profits available for distribution" has the same meaning as it has for the purposes of Part III of the Companies Act 1980, but subject to sub-paragraph (6) below.

(6) For the purposes of sub-paragraph (3) above the amount of the profits

available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased -

(a) in the case of every company, by £100, and

(b) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in sub-paragraph (4) above, by a further amount equal to that required to make the distribution to which he is entitled in accordance with that sub-paragraph;

and where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.

(7) References in this paragraph to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

4.-(1) If immediately after the purchase any associate of the vendor owns shares of the company then, subject to paragraph 9 below, the combined interests as shareholders of the vendor and his associates must be substantially reduced.

(2) The question whether the combined interests as shareholders of the vendor and his associates are substantially reduced shall be determined in the same way as is (under paragraph 3 above) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of his associate as well as his own.