



MODERNISING THE TAXATION OF DISTRIBUTIONS AND REPAYMENTS OF CAPITAL FROM COMPANIES

Issued 14 September 2026

ICAEW welcomes the opportunity to comment on the consultation on Modernising the taxation and distributions and repayments of capital from companies, published by HMRC on 23 June 2026, a copy of which is available from this [link](#).

While the proposed changes are intended to be neutral for corporation tax purposes, they will have an impact on companies' choices of restructuring options.

ICAEW supports the following proposals in principle:

- to remove the trading requirement from the exempt demergers legislation (section 3) and some of the proposed reforms to the company purchase of own shares rules (section 7). However, unless these routes are made more accessible, businesses will continue to prefer the alternatives.
- to align the income tax treatment of distributions from non-resident companies to mirror that for a distribution from a UK-resident company (section 4). However, following the *Beard* case we consider that aligning s402, Income Tax (Trading and Other Income) Act (ITTOIA) 2005 with s1000, Corporation Tax Act (CTA) 2010 should not be necessary.
- for improving the treatment of the interaction between loans and the distributions legislation (section 5), but only once the outcome of the consultation on reporting payments to participators is known and revisions to legislation have been enacted.
- to tax loans and temporary extractions from non-resident companies in the same way as for a UK-resident company (section 6). Options 3 and 4 would be our preferred choices, with the deemed write-off under Option 4 only occurring after the loan has been outstanding for 10 years.

ICAEW does not support the following proposals:

- to remove the uplift for 'new consideration' on a share exchange (section 2). This, will limit the options a company has to remove dissenting shareholders, stifling its growth and productivity. There is no evidence that we are aware of that the transactions in securities (TiS) rules do not effectively prevent the abuse HMRC says requires prevention.
- If there are gaps in the effectiveness of the TiS rules, the rules should be amended and not replaced (as proposed in section 8).

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This response of 14 September 2026 has been prepared by ICAEW's Tax Faculty.

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KEY POINTS

1. The government needs to encourage growth and reduce the administrative burden on businesses. The consultation includes a number of proposals for reform and we think the government will need to prioritise them. The government should focus efforts first on those reforms that encourage growth and/or reduce admin burdens and costs.
2. The conditions attached to capital reduction demergers (section 3) and purchases of own shares (section 7) need to be relaxed, to align them with the other restructuring routes. This can be achieved by aligning with the recently amended provisions in s137(1)-(1C) and s139(4A)-(4D), TCGA 1992. Replacing a list of conditions with new ones will do little to make these routes more attractive to businesses or to encourage growth.
3. ICAEW does not support the proposal in section 2 to remove the uplift to new consideration for the purposes of s1000, CTA 2010. The government has not explained why it considers the TIS rules to be inadequate, particularly given the recent Upper Tribunal decision in [Hunt](#), and should look to improve those rules instead.
4. ICAEW supports the proposal in section 4 to align the taxation of UK and non-UK distributions. There is judicial precedent in the [Beard](#) case which established principles for applying s402, ITTOIA 2005, so there should be no need to align those rules with the rules in s1000, CTA 2010.
5. Any changes to the interaction of loans with the distributions regime (as proposed in section 5) should only be considered once the outcome of the recent [reporting company payments to participators](#) consultation is known and any legislative changes have been enacted.
6. ICAEW supports the proposals in section 6 to bring loans and other distributions from non-UK companies into charge. We prefer options 3 and 4, but recommend that option 4 should only apply once a loan has been outstanding for ten years.

All legislative references in our response are to CTA 2010, unless otherwise stated.

ANSWERS TO SPECIFIC QUESTIONS

SECTION 1: INTRODUCTION

Question 1: How do any of the proposals outlined in this document impact Corporation Tax payers?

7. The opening paragraph of the consultation document states that it will impact individuals and trusts. In contrast, the final paragraph of the introduction (section 1) advises that the focus is on individuals. We would ask the government to clarify who the measures are intended to apply to.
8. ICAEW also notes the intention that there should be no impact for corporation tax purposes and we consider that there should be no difficulties in drafting legislation to that effect. However, ICAEW members are concerned about the impact that the proposals will have on commercial transactions.
9. There are three main types of demergers that achieve the same result of splitting different elements of a business into separate companies:
 - i. Capital reduction demergers, which our members advise are the most commonly used in practice.
 - ii. Liquidation demergers, involving a formal liquidation under s110, Insolvency Act 1986, which are a considerably more costly and complex option.
 - iii. The exempt distribution route, under Ch 5, Pt 23, which is not available for many transactions, due to the large number of conditions that the legislation imposes.
10. In addition to these, there are buyout routes, including a company purchase of own shares (CPOS), which are used to remove dissenting or retiring shareholders.

11. The proposed changes will generally be neutral for corporation tax purposes, due to the distributions legislation exempting most company-to-company distributions and also due to the substantial shareholding exemption.
12. However, the proposed measures will affect companies' behaviour. For example, the proposal in section 2 of the consultation, whereby companies will not have new consideration, or additional reserves, following a share-for-share exchange, will lead to:
 - i. Companies being unable to purchase their own shares from dissenting or retiring shareholders, due to a lack of reserves. Shareholder disagreements stifle growth and investment.
 - ii. Companies looking to buy out dissenting or retiring shareholders will look to use holding companies which the group does not need from a commercial perspective and which are burdensome in terms of cost and administratively. For example, for audited companies, an extra group company will add to their audit costs. A holding company will also impact on marginal corporation tax rates, because the small and full company thresholds will need to be shared with an additional company.
 - iii. Companies that do not have sufficient reserves will be unable to pay dividends, which will impact on their ability to attract investors.
 - iv. Liquidation demergers will become more prevalent but at the cost of substantial additional professional fees, not to mention the reputational harm and need to renegotiate supplier and customer contracts that come with winding up a company.
13. Further, the proposals in this consultation cannot be considered in isolation.
14. During 2026, HMRC has already issued consultations, and had discussions with professional bodies, in other overlapping areas, such as:
 - i. [personal tax offshore anti-avoidance provisions](#),
 - ii. the [reporting of payments between close companies and their participators](#), and
 - iii. the [taxation of members of US LLCs](#) and other reverse hybrids (which overlaps with section 4 of this consultation),none of which have yet concluded.
15. In addition, [s37, Finance Act 2026](#) recently made changes to the company reorganisation anti-avoidance rules and the impact of those changes is not yet known. Businesses require stability and certainty of position, not further administrative changes and complexity.

SECTION 2: REDUCTION OF CAPITAL

Question 2: What general comments do you have on the proposal to modernise the rules determining the size of a distribution on a reduction of share capital or share buyback?

16. As noted above, capital reduction demergers are the most commonly used mechanism for divisions of businesses and will be the route that is most affected if the proposals are enacted.
17. We note HMRC's concerns that the distributions rules provide an uplift in 'new consideration' (for the purposes of s1000(1)(B)), where a share-for share exchange is followed by a capital reduction. However, the existing TiS rules (Pt 15 and Ch 1, Pt 13, Income Tax Act (ITA) 2007) already exist to counter the mischief of converting what would otherwise be an income distribution to a capital distribution. While HMRC has informed us that the TiS rules are ineffective in some cases, it has not explained why, which means that the consultation is not going to be helpful in finding a mutually acceptable solution to HMRC's concerns. Putting this another way, HMRC has always focused on evidence-led policy making but, in this case, we are being asked to consult on the policy-making process without considering the underlying supporting evidence.
18. HMRC's technical arguments regarding TiS have been successful at the following recent tax tribunal hearings (although the taxpayers so far in the first and third instances won their appeals on other grounds):

- i. Osmond & Allen – [2024] UKFTT 378 (TC)
 - ii. Hunt – [2026] UKUT 00342 (TCC)
 - iii. Oscroft – [2026] UKFTT 251 (TC)
19. HMRC needs to explain why it is not looking to amend or replace the TiS rules to deal with any mischief. The TiS rules could be amended to have a specific anti-avoidance test linked to share exchanges or reconstructions that are followed by a reduction or return of capital.
 20. ICAEW recommends that the capital reduction rules and distribution rules (s1000(1)) should remain as they are.
 21. In conclusion, ICAEW recommends that the government reviews the existing TiS rules, rather than removing the uplift for new consideration.

Question 3: Please describe how this proposal might impact legitimate corporate demergers and share restructuring.

22. As noted at paragraph 12 above, it is expected that capital reduction demergers would no longer be a viable option in virtually every case that our members have seen in the last 18 years (since the company law rules were relaxed), and liquidation demergers will become more prevalent.
23. HMRC's examples assume that a distribution arising from a capital reduction or a CPOS is paid in cash, so that the shareholder has funds to pay their income tax or capital gains tax (CGT) liability. However, where assets such as shares in subsidiaries or land and property are distributed, the shareholder has a tax liability but no means to pay it (a dry tax charge).

Question 4: Can you anticipate any other unintended or unwelcome consequences of this proposal, such as on third party sales?

24. Until legislation has been enacted, it is hard to predict what the wider consequences would be. These would need to be reviewed over a multi-year period, which would be a big undertaking. For reference, the TiS rules have been in place for 66 years and are still generating technical arguments for the judiciary.
25. Where the initial share-for-share exchange did not attract relief under s135, TCGA 1992 (equating the base cost of the new shareholding with that of the original), the shareholder would have paid CGT on the transaction. There would need to be a mechanism to allow the consideration declared by the shareholder to be recognised as 'new consideration' of the new holding company.
26. Management buyouts commonly involve the incoming shareholders acquiring a mixture of shares from the outgoing shareholders as well as subscribing for newly-issued shares in cash. Any new legislation should include an apportionment rule for those new shares to ensure there is an addition to 'new consideration'.
27. ICAEW notes that the proposals do not include any transitional provisions. Any legislation must allow credit must be given for additional capital (new consideration) where holding companies were inserted historically for wholly commercial reasons.

SECTION 3: DEMERGERS

Question 5: In what scenarios would you currently undertake or recommend a non-statutory demerger?

28. A non-statutory demerger is used where the transaction would fail one or more of the Conditions in Ch 5, Pt 23, for a statutory demerger. Typically, this would be:
 - i. Because a company has some non-trading activities (so may fail one or more of Conditions B, F and K, depending on how the demerger is effected);
 - ii. Where a sale is anticipated within five years of the demerger (which would be caught by s1081(5)(f)); or

- iii. Because an investor only wants part of the existing business (potentially failing Conditions C and/or D).
- 29. Many companies decide against a liquidation demerger (under s110 of the Insolvency Act 1986), because of the reputational harm of a liquidation (even though it is a solvent liquidation) or because it potentially terminates their supplier and customer contracts, which would need to be renegotiated.

Question 6: Do you think that the statutory demerger rules ought to apply to a broader scope of transactions?

- 30. Yes, ICAEW considers they should be more widely available. This is because in most cases there is an alternative method that can be used, such as a capital reduction demerger or a s110 liquidation demerger, in order to avoid a dry tax charge.
- 31. Outside of family companies, the experience of our members is that restructurings are primarily driven by commercial considerations, including a desire to limit professional fees.

Question 7: What comments and suggestions do you have regarding the amendments suggested above to the statutory demerger legislation?

- 32. The overarching aim of the changes should be to align the exempt distribution demerger rules (Pt 5, Ch 23) with those of capital reduction demergers and liquidation demergers.
- 33. Our members consider that the statutory demerger rules do not work in practice, which is why advisers tend to favour capital reduction demergers.
- 34. Since advance corporation tax (ACT) was abolished in 1999, there is no mischief that Conditions A to M could catch, other than what is already legislated for in s137, TCGA 1992. The demergers legislation should be drafted to match the Finance Act 2026 changes to s139(4A) to (4D), TCGA 1992.
- 35. In terms of the specific conditions:

Condition A (s1081(1))

- 36. ICAEW supports that the removal of the UK-residency requirement at Condition A.

Condition B (s1081(2))

- 37. ICAEW also agrees with the proposed changes to Condition B to extend its scope beyond trading activities. As presently enacted, the distributing company, and all subsidiaries whose shares are being distributed, must be trading at the time of the distribution.
- 38. If Condition B is amended, this must be mirrored with amendments to Condition D, which we comment on below.
- 39. The government must also consider whether indirect distributions under s1076(1)(a)(i), which is currently limited to a trade, should also be extended to investment activities (and not just to the distribution of shares in an investment company).

Condition C (s1081(3))

- 40. Condition C is met where distributions are made wholly or mainly for the benefit of the company's or group's trading activities. If Condition B is to be extended to non-trading companies, then we agree with the proposal to repeal Condition C.

Condition D (s1081(5))

- 41. The government is considering reforms to several aspects of Condition D.
- 42. HMRC has not explained why it considers it necessary to have restrictions for exempt distribution demergers and not for the other mechanisms. ICAEW is concerned that the

restrictions will not protect tax revenues and will not make exempt distribution demergers any more popular.

43. In principle, ICAEW does not support these proposals.
44. However, if the government decides to implement them, then ICAEW considers that the following would need amending:
- i. A relaxation of s1081(5) to allow a sale of the trade or shares in a trading company that have been distributed after five years have elapsed. Currently, any sale that is anticipated at the time of the distribution would fail this condition.
 - ii. No change of control is currently permitted after a demerger (s1081(5)(d)). ICAEW supports the proposal to allow a change of control after five years.
 - iii. At present, the demerger must not be used to facilitate a cessation of a trade after the distribution (s1081(5)(e)). As above, the proposal is to allow this after five years. ICAEW would caution the government against limiting an exemption to compulsory winding ups (as defined under the Insolvency Act 1986), as this could mean that a director has breached their Companies Act director's duties if they didn't seek a voluntary winding up. That in turn can have ramifications for the director in terms of personal liability and potential director disqualification proceedings. The government should encourage and incentivise entrepreneurship, not penalise genuine efforts to run a business.

Conditions E, H and J (ss1082-1083)

45. On a distribution of a subsidiary's shares, the current requirement is that 'the whole or substantially the whole' of the distributing company's shareholding and voting rights in the subsidiary must be distributed to the transferee company. The proposal is to require all the shares to be distributed.
46. ICAEW members were either ambivalent about, or did not support, the proposed amendments to Conditions E and H.
47. ICAEW considers that HMRC's proposal for Condition J may not be lawfully possible under s1083(4)(b). This is because the transferee company will already have issued at least one share when it was incorporated, prior to the demerger being implemented, so not all of its share capital will be issued in consideration of the demerger.

Condition I (s1083(3))

48. Currently, the transferee company's main activity after the distribution must be to carry on the trade or hold shares in the shares that were transferred to it. The proposal is to limit this requirement to the period 'immediately after the distribution'. If Condition B is only extended to investment companies, then this proposal seems reasonable. However, if Condition B is further extended to include the distribution of investment activities (ie, investment assets) then the proposal would deny relief under Condition I, where the demerger is within s1077(1)(a), because there would be no trade.

Condition K (s1083(5) and s1084)

49. If Condition B (s1081(2)) is to be relaxed to allow the distributing company to be an investment company, then Condition K should be similarly amended (if not already done so as part of the plans mentioned in the consultation for Condition B). ICAEW supports the proposal to repeal s1084(1) and to amend s1084(2) to relax the circumstances when the distributing company can be dissolved.

Conditions L and M (s1085)

50. The conditions apply where the distributing company is itself a subsidiary.
51. ICAEW agrees that these provisions should be repealed.

Other conditions

52. The demerger rules are the only one of the three demerger routes (as outlined above at para 9) that requires post-transaction reporting (ss1095-1096). These requirements should be removed to provide parity.
53. ICAEW is concerned at the proposal to remove the automatic right of appeal to Tribunal (under s1094) if a clearance request is denied (as outlined immediately above Q5 in the consultation document). This is a useful provision for taxpayers, especially in cases where HMRC lacks understanding of genuinely commercial arrangements. We understand the provision is rarely used, so retaining it would not involve a significant use of Tribunal time.

Question 8: Are there any other specific parts of the legislation which you think the government should re-examine?

54. It is unclear from the consultation document, other than the note for Condition B, whether there will be any amendments to Condition F at s1082(2)-(4), (ie, the requirement for the distributing company to be trading, or to be the holding company of a trading group, after the distribution). ICAEW considers that Condition F should also be amended to remove the trading requirement post-demerger.
55. Schedule 5AA, TCGA 1992, which defines what a 'scheme of reconstruction' is, uses the term 'business' rather than 'trade'. ICAEW recommends that the demerger rules be amended to mirror the Sch 5AA definition.
56. ICAEW also notes that the alternative mechanisms for demergers do not specify the quantum of the holding of a subsidiary that is to be demerged, whereas the exempt distribution rules (ss1076(a) and 1077(1)(a)(ii)) state that the exempt distribution relief can only apply to the demerger of a 75% subsidiary. We recommend that this restriction also be removed from the exempt distribution rules.

Question 9: In what way do you think the demerger rules ought to be liberalised in order to account for the removal of capital demergers?

57. HMRC needs to be mindful of the commercial aspects of restructurings. The s110 liquidation route is not attractive because it is slow, expensive and requires all supplier and customer contracts to be moved or renegotiated. Furthermore, there are negative commercial connotations to winding up a company, which make this mechanism even less attractive.
58. A statutory demerger will continue to be unattractive due, at least in part, to the five-year restriction period, as realistically no business plans that far ahead and no prospective buyer will wait that long.
59. We therefore propose that all of the conditions for exempt distributions be repealed and replaced by a rule based on s139(4A) to (4D), TCGA 1992 which covers income tax, capital gains tax and corporation tax.

Question 10: Do you anticipate any unintended consequences as a result of the proposals set out in this chapter?

60. The proposals will not make a distribution demerger more attractive, as they still impose a number of conditions that do not apply to capital reduction or liquidation demergers. Businesses will continue to favour the alternative routes.

SECTION 4: INCOME TAX TREATMENT OF DISTRIBUTIONS FROM NON-UK RESIDENT COMPANIES

Question 11: Do you have any general comments on aligning the charge to Income Tax on distributions from non-UK resident companies with the rules that already apply to distributions from UK-resident companies?

61. As we noted in section 1, HMRC is consulting, or has recently consulted, on two overlapping measures, personal tax offshore anti-avoidance legislation and the taxation of reverse hybrids, including US LLCs. We do not see that any decision on the income tax treatment of non-UK distributions can be made until the other consultations have concluded and the effect of any resulting legislative changes have been reviewed. We suggest that the teams involved in these consultations should work in parallel.
62. ICAEW agrees with the government's aim that distributions from non-resident companies should be taxed in the same way as distributions from UK-resident companies.
63. The proposals will continue to be problematic, because they still require analysis of other legal systems, often involving different languages and information that is not publicly available on company registries, in order to try to fit a distribution into one of the categories in s1000.
64. ICAEW members have highlighted the 2025 Court of Appeal decision in *Alexander Beard* ([2025] EWCA Civ 385). The company in that case had the choice whether to distribute funds to shareholders as a dividend or as a capital distribution, and it chose the former. The case provided judicial guidance that, while complex, is workable in practice, in respect of distributions from non-UK resident companies.
65. Following the *Beard* decision, our members consider that there is no need to make changes to align s402, ITTOIA 2005 with s1000.

Question 12: Can you foresee this proposal having any impact on obtaining relief for double taxation where the distribution is subject to tax in another state?

66. HMRC has limited taxing rights over a non-resident company, so whether a distribution is taxable in another jurisdiction should not be of concern to the UK

Question 13: Do you anticipate this proposal deterring any commercial corporate actions? If so, please provide details and suggestions of how this impact could be addressed.

Question 14: Do you have any comments on the proposal to extend the charge to stock dividends? In particular, are there difficulties with the classification of shares in non-UK jurisdictions?

Question 15: Do you have any comments on extending the charge to redeemable bonus shares and securities?

Question 16: Do you have any comments on to what extent the charge to Income Tax on distributions should apply to payments on special securities and non-commercial securities?

Question 17: Do you have examples of where instruments that would be treated as special securities and non-commercial securities are used in existing structures where the return would be paid to UK residents within the charge to Income Tax?

67. ICAEW has no additional comments to make for these questions.

Potential issues with returns of capital and similar situations

Question 18: Do you have any comments on the potential tensions between the definitions used in the UK distributions rules and non-UK corporate legislation, especially with regard to the distinction between income and capital? In particular, are there any difficulties around what constitutes a ‘repayment of capital’? How could these be addressed?

68. ICAEW has no additional comments to make for this question.

Question 19: Do you have any insights from other jurisdictions which also use the capital/income divide in their tax legislation?

69. ICAEW has no additional comments to make for this question.

Question 20: Are you aware of any particular existing difficulties around whether a distribution from a non-UK incorporated company is a ‘dividend’? Should the government consider introducing provisions to clarify the treatment where the non-UK company law is unclear?

70. Any legislative changes should have a mechanism for determining the UK tax treatment where the law in the other jurisdiction is unclear.

Question 21: When calculating what amount of a distribution is a repayment of capital, would it be effective to permit small shareholders in widely held or quoted companies, who do not have access to the necessary information, to simply use the nominal value of the interest they hold on a share buyback? Are there any difficulties with calculating the nominal value of the share in some jurisdictions?

71. ICAEW considers that this is a sensible provision, although it shouldn’t be confined to small shareholders, it should be extended to situations where the shareholder cannot reasonably obtain the relevant information. As we noted in our response to Question 11, not all company registries are publicly accessible and company law varies around the world as to what information a shareholder is entitled to request.

72. Investors would be unduly burdened if they have to seek detailed legal advice in every jurisdiction in which they hold shares, in order to fulfil the self assessment declaration requirements that their return is correct and complete and to avoid penalties for not having taken reasonable care.

73. Special provisions would be needed for certain situations, for example:

- i. Some jurisdictions which have no-par-value shares, where the amount that the taxpayer can prove they subscribed could be used.
- ii. In some countries, such as Canada, companies do not have specifically denominated share capital.
- iii. Some companies also have no share capital at all, in which case the capital account is an equivalent that could be used.

SECTION 5: INTERACTION BETWEEN DEBT, LOANS AND THE DISTRIBUTIONS LEGISLATION

Question 22: Are you aware of instances where dividends or other distributions have been improperly paid? If so, were the distributions repaid to the company and on what timescale? What was the tax treatment generally adopted on the repayment?

74. As noted earlier in our representation, HMRC has recently consulted on the [reporting of payments to participators](#). Any wider changes to the payments to participators rules that happen following that consultation need to be considered here.

75. Our members have provided two main examples where it can be unclear how much is repayable or when:

76. First, there are what we would call inadvertent errors (eg, putting the wrong value on a company-to-shareholder distribution, especially where assets other than cash are transferred at an agreed value), where HMRC later considers that the transfer was for less than market value. The undervalue can be treated by HMRC as a distribution (s1020), or in cases where the company had insufficient profits, as an overdrawn director's loan account.
77. Second, there is the classification of interim dividends, where the company had sufficient distributable profits when the dividend was paid, but has insufficient profits when the accounts for that period are drawn up. In those cases, the excess dividend may need to be reclassified as a loan to a participator in the accounts. There was no intention to repay that interim dividend at the time when it was made, so the commercial reality is that it is more akin to a distribution than a loan.
78. If HMRC is concerned about timing mismatches being used intentionally to avoid tax, then the government could amend the existing anti-avoidance rules at s464ZA.

Question 23: Would priority rules to establish what the primary charge will be on an extraction address the issue? Are there any adverse consequences to this?

79. We support the idea of Option 1 (establishing a priority rule), in order to provide taxpayers with certainty, which is ICAEW's second tenet for a Better Tax System listed in Appendix 1. Dealing with an HMRC enquiry or appealing to Tribunal, are both expensive and time consuming, so any legislation that avoids those is always welcomed.
80. ICAEW would be happy to provide further input on any detailed proposals that HMRC is considering.

Question 24: Do you have any views as to whether legislating for the current discretionary practice of unwinding unintentional gratuitous transfers would provide a solution?

81. We support Option 2, to formalise the existing practice of allowing the shareholder to pay an additional sum to the company, where HMRC has challenged the original value, in order to avoid a distribution arising to the shareholder under s1020.

Question 25: What are your views on allowing Income Tax paid on an unlawful distribution to be set off against liabilities incurred on rectifying the issue?

82. Option 3 (enabling income tax paid on extractions to be set off against liabilities incurred on rectifying the payment) is also a sensible proposal.
83. The scope should be extended to cases where the original recipient of the unlawful distribution is no longer in existence. This could include the estate or heirs of a deceased shareholder, or the beneficiaries of a trust which has since been wound up.

Question 26: What alternative solutions might be implemented to address the issues raised in this chapter?

84. One solution could be to charge corporation tax late payment interest from the date the money was withdrawn from the company, not from the date that the s455 is unpaid.
85. Our members have also suggested that the UK could introduce a US-style 'check the box election' where a limited company and its shareholders can elect for the company to be treated as transparent, with the company's profits then taxable on the shareholder(s) as if they were sole traders (or partners). We would be happy to discuss this approach further.
86. Where a company has paid tax under s455 ('s455 tax') on an overdrawn director's loan account, this can currently only be repaid nine months after the end of the accounting period in which the loan was repaid or written off. Where a company goes into liquidation, a new accounting period is triggered. This means that the liquidator has to wait nine months from the end of that accounting period to recover the s455 tax, which could mean a wait of up to 21 months from the date of liquidation (assuming there is a 12-month accounting period post-liquidation). ICAEW recommends that the s455 should be repayable sooner in

liquidation cases, otherwise the liquidator cannot close the liquidation, even though all other matters may have been dealt with.

SECTION 6: LOANS AND OTHER TEMPORARY EXTRACTIONS FROM NON-RESIDENT UK COMPANIES

Question 27: Given that the tax would need to be paid by individuals rather than by the companies making the loans, would this result in particular administrative difficulties? If so, please provide examples.

87. ICAEW supports the overall aim of ensuring loans from a close company to a UK-resident individual are taxable in the same way, regardless of the company's residency position.
88. The measures that are proposed will apply to inbound individuals with non-resident companies who receive loans after they arrive in the UK. However, they don't appear to catch loans that were made prior to the individual becoming UK tax resident, or loans made to a UK resident individual who later becomes non-resident.
89. Loans to a UK-resident individual from an overseas company create tax problems for taxpayers, such as:
 - i. Charges under the transfer of assets abroad rules, especially s727, ITA 2007;
 - ii. Where a non-resident trust owns shares in the offshore company, there is matching of capital payments to trust beneficiaries under s87, and Sch 4C, TCGA 1992;and there is a lack of awareness of these rules.
90. The transfer of assets abroad rules are also the subject of a separate ongoing consultation, so the HMRC teams working on changes to those rules need to collaborate.
91. The definition of a close company may not work for companies formed in jurisdictions with different legal systems, especially when trying to ascertain what the share capital is and who has control. We note HMRC's comments that legislation, such as the TiS rules, already require a UK resident to consider if an offshore company would be close if it were UK resident (eg, s713(1), ITA 2007).
92. Shareholders who are not directors may not have any right in the overseas jurisdiction to obtain information about the company.

Question 28: What general comments do you have on the proposal to introduce a temporary tax on loans received from non-UK resident closely controlled companies?

93. Any legislation would need to contain priority rules where there have been loan repayments and further advances, to determine how much is taxable and when.
94. The consultation has not considered the other tax charges that apply to loans to participators, namely a benefit in kind charge while the loan is outstanding (Ch 7, Pt 3, ITEPA 2003) and the Class 1 national insurance charge when a loan is released or written off. A non-resident company will not normally have a liability to Class 1 if it has no presence in the UK, so who would be responsible for collecting it and paying it. How does the government intend to address those issues?

Question 29. Do you have any specific comments on the four options outlined above? Do you have any suggestions as to what time periods would be appropriate?

95. Option 1 (making a s455 charge on the individual borrower if a loan is outstanding at 31 January following the relevant tax year, with write-offs taxed as a distribution) and option 2 (levying a s455 charge if a loan is outstanding after three years, with write-offs taxed as for option 1) do not offer parity of treatment with a UK-resident company making a loan, because the s455 charge as proposed will be levied on the borrower and not on the company.

96. If the charge is to be on the taxpayer, will they have the resources to pay the tax? Even if the borrower had a right in UK legislation to recover the s455 from their non-resident company, that is unlikely to be legally enforceable in the overseas jurisdiction.
97. Option 1 will be problematic administratively, because the self assessment filing deadline of 31 January is also the final date for repaying the loan to avoid the proposed s455 charge. Since April 2025, companies submitting CT600A forms have been prevented from filing if the form showed a director's loan repayment date that was after the submission date. The proposed timing will lead to a considerable number of last-minute tax return filings and/or amendments to returns, as well as potential late payments. In turn this will add to advisers' workloads at what, for many agents, is their busiest time of the year.
98. For Options 1 and 2, the individual will suffer the s455 tax charge and will also be taxed again if the loan is released or written off under s415, ITTOIA 2005. The s455 tax is a 'temporary tax', because a UK-resident company can recover the s455 it has previously paid after the participator has repaid the loan, or after the loan has been written off. We understand that the government's plans do not include repaying the s455 to the borrower. Therefore, there needs to be a mechanism to give the individual borrower credit for the s455 they would pay under these two options, against the tax (and potentially Class 1 national insurance) they will pay on the amount that is later written off.
99. Option 3 (no s455 charge, but a write-off is taxed as a distribution) is the simplest option and replicates the treatment for the participator. Economically, the government will naturally be more interested in keeping the income tax due on a loan write-off, over any s455 tax that it only gets to retain in the short term.
100. If Option 3 is implemented, then Option 4 (a deemed write-off for loans outstanding after five years) would also be needed, otherwise there would be no s415, ITTOIA 2015 charge if the loan is never written off or released.
101. Option 4 proposes a deemed write-off after five years, which will trigger a permanent income tax charge, rather than the temporary tax receipt that s455 tax offers. ICAEW considers that this is too short a period, as it will catch commercial loans that will be repaid in time. ICAEW suggests a period of 10 years.
102. Option 4 could be difficult to enforce if the borrower has ceased to be UK resident before the deemed write-off occurs.

Question 30: The close company definition is extremely broad. Can you see this proposal affecting loans made on arm's length terms to participators with very minor interests, and if so, can you provide examples?

103. As we noted for Question 27 and at paragraph 73, the existing close company definitions may not fit companies formed under different legal systems, where no-par-value shares may be issued, or there may be no share capital at all.

Question 31: What impacts would the proposal have on arm's length commercial lending?

104. A loan creditor is within the definition of a participator (s454(2)(b)), as are suppliers who advance credit of more than six months. The proposals risk catching further commercial lending to a company or its director/shareholders.
105. The current exemptions for loans made in the course of a business or for longer-term supplier credit (s456(1)-(2)) are aimed at financial institutions, so are insufficient where lending is only a small part of the lender's activities. The current exemption will need to be expanded to exclude arms' length lenders, who have no other connection to or influence over the company, from being classed as participators.

Question 32: Would limiting this charge to participators and associates of participators with material interests in the overseas companies help to target this at loans which represent extractions of profit?

106. ICAEW supports the idea of a de minimis for participators and their associates with a holding of less than 5%. This exemption would also need to apply to loans from a UK-resident close company if the policy aim of parity of tax treatment is to be met.

Question 33: If we expand the exclusion for loans or advances made in the ordinary course of business, what changes would be necessary to avoid curtailing normal commercial activity?

107. We refer you to our answers for Question 31.

SECTION 7: PURCHASE OF OWN SHARES RULES

Background to the CPOS requirements

108. A CPOS has to satisfy a number of conditions:
109. First, there are the Companies Act 2006 requirements for a CPOS to be legally valid, which includes a requirement that cash must be paid in full on completion of the buy back ([CTM17505](#)).
110. Second, there are multiple conditions (ss1033–1047) which must be satisfied if the proceeds are to be treated as a CGT receipt for the disposal of shares, rather than as an income distribution. The company effecting the buy back must also report to HMRC within 60 days (s1046). These requirements are not dissimilar to those for exempting demergers from being distributions (Ch 5, Pt 23) and are equally onerous.
111. If the conditions are met for CGT treatment, the disposal is treated as arising at the date the contract to buy back the shares is agreed.

Question 34: What general comments do you have on the proposals set out in this chapter?

112. ICAEW welcomes reform of the trade benefit test (Condition A at s1033), which we agree has been problematic for taxpayers and HMRC. This is in line with other proposals in this consultation to remove the trading requirement. We have considered each of the six proposed conditions below.
113. However, ICAEW also believes that the requirement that the company be a trading company or the holding company of a trading group should also be repealed. This would be in line with the proposals for exempt distributions in section 2 and should not lead to any loss to the exchequer, as the same economic result can be obtained using a buyout mechanism.
114. The same tax effect of a CPOS that qualifies for CGT treatment can be achieved by using one of the other buyout methods that offer CGT treatment. CPOS is an exemption from treatment as an income distribution, similar to the distributions rules. We do not understand why greater protection is given to the income distribution rules, particularly after the abolition of ACT. Retaining the breath of conditions in the CPOS rules will continue to deter companies from implementing a CPOS and they will use the alternatives.

Proposal 1 – minimum 5% ownership throughout a two-year working period

115. We welcome the reduction in the minimum ownership period from five years (s1035) to two. However, we do question why any minimum ownership period is necessary, because the alternative structures for buying out a shareholder have no such minimum.
116. First, CPOS are used to remove dissenting shareholders or retiring shareholders. This could include the legatees of an individual who has died or an individual who has been

dismissed without notice and the company has a commercial need to buy them out. There has never been a requirement for a shareholder to be an employee and there is no explanation given for this proposed test. Neither the executors nor the former employee would be employees at the date of the CPOS.

117. Minimum shareholdings and minimum employment periods already exist in the business asset disposal relief (BADR) rules to limit the 18% rate of CGT to individuals who are actively involved in a company. ICAEW sees no reason why the government is seeking to deny CGT treatment at the CPOS layer of legislation and therefore we do not support this proposal.
118. Second, this proposal would need to be clear what the 'departure date' is for the two-year test. Will it be the date of the CPOS contract, or can the earlier date of cessation as a director or employee be used in cases of death or dismissal, as long as the CPOS is carried out within a reasonable time?
119. Finally, the minimum 5% test will mean that multi-generational family companies, where the shareholdings have been diluted down the generation, will be unable to remove minor, but vocal, shareholders or groups of shareholders. Companies cannot grow while they are dealing with disputes among shareholders and directors, and growth is one of the government's key priorities.

Proposal 2 – disposal of entire shareholding

120. HMRC has allowed a shareholder to retain a minor holding for sentimental reasons for over 40 years, since it published [Statement of Practice 2/82](#). No such restrictions exist for other buyout routes. The government has not provided a policy reason why it wishes to abolish this practice for CPOS only.

Proposal 3 – permit multiple completions provided full payment is within two years

121. A common problem with the Companies Act requirements is that companies do not always have the reserves and funds to buy back the shares in one go.
122. Significant cash holdings can also jeopardise a company's trading status, ruling out eligibility for CGT and inheritance tax (IHT) reliefs, such as BADR or business property relief (BPR).
123. In order to meet the cash-on-completion requirement, the multiple completion route was used. This allows a company to have one contract to buy back all of a shareholder's shares (which triggers the CGT disposal), but it completes the legal transfer and makes payments to the shareholder in stages, often based on when the company's reserves hit certain thresholds. In 2022, HMRC issued [a statement](#) (also at [CG58644](#)) saying that the tax requirements for a substantial reduction in a shareholder's holding (s1037) and to no longer be connected with the company (s1042(1)) may not be met where multiple completions were carried out. This went against what had been accepted practice for some years and made a CPOS less attractive.
124. ICAEW therefore welcomes the third proposal to formally allow multiple completions.
125. However, two years to complete the exit will be too short in many cases to be of practical use. ICAEW would prefer that there be no time limit, as there is none for the payment profiles of other buyout mechanisms.

Proposal 4 – the company must take reasonable steps to ensure that it has not paid more than market value

126. This requirement appears to stem from the FTT decision in [Boulting](#) ([2025] UK FTT 1272 (TC)). The focus of that case was whether the share value, if excessive, meant that the trade benefit test was not met; the case did not define market value. However, the actual valuation of the shares was a very minor factor in the decision of the FTT in that case.

127. Section 17, TCGA 1992 already imposes a market value requirement for non-arm's length transactions that are within the charge to CGT. Section 18, TCGA 1992, which requires market value to be used on transactions between connected persons, does not apply to a purchase of own shares ([CG14570](#)). The TiS legislation should already be sufficient to deal with HMRC's concerns about what would otherwise be an income distribution being converted to a capital distribution.
128. Our members consider that any legislation would need to address the following issues:
- What evidence should an unquoted company gather and retain?
 - Should one or more independent valuations should be obtained? For example, in the [Boulting](#) case, the Tribunal agreed that Mark Boulting "made a bona fide attempt to value the company", and while not a valuations specialist, "his knowledge was that of a well-educated businessman" (para 71).
 - The valuation methodologies that should be used where there is a shareholder dispute or where there are circumstances specific to that company.
 - How much reliance could be placed on independent valuations, or valuations that have been agreed with HMRC?
 - That capital treatment should not be invalidated where reasonable care was taken.
129. The risk, as for some of the other proposals, is that if it conditions are imposed to limit capital treatment, then companies will use other buyout structures, which do not have the CPOS restrictions, to achieve the same end.
130. What would HMRC consider to be 'reasonable steps'? And what level of evidence would be required? In recent years, our members tell us that HMRC has been reluctant to commit to its own [post-transaction valuation checking process](#) (CG34). Taxpayers want certainty of position, not the added cost of having to engage multiple professional valuers or have lengthy correspondence with HMRC's valuers.

Proposal 5 – five-year minimum ownership and working periods for family connections

131. ICAEW considers that extending the ownership and employment periods to five years would, as noted for some of the other proposals, mean that companies will prefer to use buyout structures over a purchase of own shares. It also suggests that the government is averse to family successions for small businesses that are the lifeblood of the UK's economy.

Proposal 6 – capital treatment is withdrawn if departing shareholder becomes a director or shareholder within five years, with some relaxation for inherited shares

132. This proposal does not reflect the commercial realities faced by many businesses. If the purchase of own shares involves a retiring shareholder, it is common to have an extensive handover period of several years, so that product and operational knowledge, and customer relationships are not lost.
133. Under the new management, the previous directors may occasionally be asked to come back to help if the company gets into difficulties. The proposals must allow for the original capital treatment to remain in the case of genuine commercial arrangements.
134. ICAEW considers that inherited shares should not be within scope of this proposal. A former shareholder has no control over whether they will they inherit or when, so could not have anticipated an inheritance at the time the CPOS was carried out. Given the reduction in the BPR threshold to £2.5m from 6 April 2026, IHT may be payable on the death, so we are unclear what mischief HMRC would be seeking to prevent in this case.
135. If a shareholder has passed away, the company may have lost one of its key directors. The company would already have carried out one buy back of shares, and it would not be fair to penalise a shareholder if the company cannot afford, or cannot reach agreement, to carry out a second buyout of the inherited shares just a few years later

- 136. If this proposal is enacted, taxpayers would need to be given credit against the recategorised income tax liability for any CGT paid when the capital treatment was originally declared.
- 137. There would also need to be a mechanism to reinstate capital losses and any BADR (for the purpose of the £1m lifetime allowance), that were claimed against the capital disposal. The mechanism would need to apply for all tax years from the date of disposal, to the tax year of the recategorisation, which may extend beyond the normal time limits for amending a tax return.

Question 35: What unintended consequences do you anticipate as a result of these changes?

- 138. ICAEW has no additional comments to make for this question.

SECTION 8: UPDATED CAPITAL EXTRACTION ANTI-AVOIDANCE (TRANSACTIONS IN SECURITIES)

Question 36: What general comments do you have on the proposal set out in this chapter?

- 139. Our members feel that the only key uncertainty relating to the TiS rules is the application of the motive test. The Tax Tribunals have largely resolved the other issues over the last 66 years, which guide accepted practice.
- 140. We refer you also to our comments in section 2.
- 141. Replacing one set of anti-avoidance provisions with another will only create more uncertainty for taxpayers and agents and more work for HMRC and the Tax Tribunals.
- 142. ICAEW does not support the proposals.

Question 37: What unintended consequences do you anticipate as a result of this proposal?

- 143. ICAEW has no additional comments to make for this question.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory.** Tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament. A clear statutory basis ensures legitimacy, accountability, and public trust in the tax system.
2. **Certain.** As far as possible, the application of tax rules and compliance processes should be certain. Taxpayers should not normally need to resort to the courts to understand how the rules apply to their affairs.
3. **Simple.** The tax system should be easy to understand for all taxpayers and advisers. Complexity undermines trust, creates unfairness, and discourages compliance.
4. **Easy to administer.** Tax liabilities should be straightforward to administer for HMRC, agents, and all taxpayers. Taxes should be designed to work effectively in a digital environment, while administration must remain accessible to those with limited digital capability.
5. **Properly targeted.** Anti-avoidance rules and other targeted measures should be proportionate, clearly defined, and carefully scoped to achieve their policy objective without undermining simplicity or certainty. Poorly targeted measures add complexity and uncertainty, harming compliance.
6. **Stable.** Changes to the tax system should only be made when clearly justified by economic, social, or environmental goals. Transparent, purposeful reforms build confidence and move the system toward greater coherence and long-term stability.
7. **Subject to proper consultation.** Other than in exceptional circumstances, tax changes should be subject to open and meaningful consultation. Adequate time for stakeholder input improves policy quality, practicality, and public trust.
8. **Regularly reviewed.** Tax rules, reliefs, and policy-driven interventions should be subject to regular, transparent review to assess whether they remain relevant, effective, and aligned with current policy goals. Outdated or unjustified provisions should be reformed or repealed to maintain coherence.
9. **Fair and accessible.** The tax system should be fair and accessible in design and in operation, ensuring equitable treatment of taxpayers. Revenue authorities must exercise their powers proportionately, and all taxpayers should have timely access to HMRC assistance, independent appeal, and redress.
10. **Efficient.** The tax system should raise revenue in a way that minimises unnecessary distortions, compliance burdens, and resource misallocation. While all taxes affect behaviour to some degree, tax design should avoid cliff edges, unintended incentives, or inefficiencies that reduce economic wellbeing unless these serve a clearly defined policy aim.

For more information, please see [Ten Tenets for a Better Tax System | ICAEW](#)