

Distribution Rules
Taxes Office Guidance Notes

DRAFT 2: RELEASED 11th FEBRUARY 2013

These guidance notes explain the taxation of company distributions following the changes made to the Income Tax Law¹ in Income Tax (Amendment No.41) (Jersey) Law 2011- and also describes the administrative arrangements.

A consolidated version of the Income Tax (Jersey) Law, 1961, incorporating all the amendments, will shortly be published on the Income Tax Website at <http://www.gov.je/TAXESMONEY/INCOMETAX/TECHNICAL/LEGISLATION/Pages/Law1961.aspx>

These guidance notes contain the Comptroller's interpretation of the Income Tax Law and they do not affect a person's right of appeal on any point concerning a liability to tax.

These are complex provisions and this draft of the guidance notes will be subject to revision, refinement and enhancement in the light of practical experience.

The Comptroller is willing to give advice relating to any scenarios or circumstances that are not covered in these guidance notes, provided that the approach to the Comptroller is made on a "named basis" and all relevant facts are fully disclosed.

A separate set of guidance notes will also be produced in relation to the intermediate services entity amendments which were also introduced with effect from 1 January 2013.

For specific enquiries please contact:

Chris Le Breton: C.Lebreton@gov.je

David Le Cuirot
Acting Comptroller of Taxes
11 February 2013

¹ References in these guidance notes to the "Income Tax Law" are to the Income Tax (Jersey) Law 1961, as amended.

1 INTRODUCTION

2 DEFINITION OF DISTRIBUTION

2.1 BASIC DEFINITION

2.2 NEW CONSIDERATION RECEIVED BY THE COMPANY

2.3 FROM 1 JANUARY 2013 WHAT WILL BE A “DISTRIBUTION”

2.4 WHAT IS NOT A “DISTRIBUTION” FROM 1 JANUARY 2013

2.4.1 Payment on interest

2.4.2 Repayment of commercial loans to trading companies

2.4.3 Stock dividends

2.4.4 Meeting of expenses/business expenditure

2.4.5 Distributions/emoluments left outstanding

2.4.6 Amounts taxable under “intermediary services vehicles” rules

2.5 INTERACTION WITH EMPLOYMENT INCOME

2.6 TAXATION OF DISTRIBUTIONS FROM NON-JERSEY RESIDENT COMPANIES

3 TAXATION OF DISTRIBUTIONS

3.1 SCHEDULE DIX

3.1.1 Key points relating to Schedule DIX

3.1.2 When is a distribution taxable under Schedule DIX?

3.2 SCHEDULE DIII

3.2.1 Key points relating to Schedule DIII

3.2.2 Which distributions are exempt from tax under Schedule DIII?

4 SIMPLIFIED BASIS OF TAXATION

4.1 MAKING THE ELECTION

4.1.1 Election is made on a company-by-company basis

4.1.2 Election applies to one year of assessment only

4.1.3 Ability to change basis of taxation up to election deadline

4.2 WHO MAY ADOPT THE “SIMPLIFIED BASIS OF TAXATION”

5 CALCULATIONS IN THE DISTRIBUTION RULES

5.1 IS IT NECESSARY TO CALCULATE THE “INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS”?

5.2 CALCULATION OF THE “INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS”

5.3 ELEMENT 1: CALCULATION OF “SPECIFIED PROFITS”

5.4 ELEMENT 2: CALCULATION OF PARTICULAR INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS

5.4.1 Stage 1 – identification of the financial periods falling within the current period of share ownership

5.4.2 Stage 2 – identification of the “relevant financial period”

5.4.3 Stage 3 – summation of the specified profits of the financial periods falling within the current period of share ownership, up to and including the relevant financial period

5.4.4 Stage 4 – treatment of untaxed profits under the deemed distribution rules

5.4.5 Stage 5 – scaling calculation

5.4.6 Stage 6 – P-Q formula

5.4.7 Stage 7 – determination of the particular individual’s allocated share of specified profits

5.5 COMPARISON OF DISTRIBUTION TO THE INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS

5.6 SUBSEQUENT DISTRIBUTIONS WHICH FALL WITHIN THE SCOPE OF THE DISTRIBUTION RULES

5.6.1 Which Article applies?

5.6.2 Chronological order approach – “immediately previous relevant time”

5.6.3 Calculation structure

6 MULTI-TIERED STRUCTURES

6.1 WHAT IS A MULTI-TIERED STRUCTURE?

6.2 PURPOSE OF ART 81X

6.3 WHEN DOES ART 81X APPLY?

6.4 CALCULATION OF THE INDIVIDUAL'S DEEMED PROPORTION OF THE COMPANY DISTRIBUTION

6.5 CALCULATION OF THE INDIVIDUAL'S ALLOCATED SHARE OF SPECIFIED PROFITS IN THE DISTRIBUTING COMPANY UNDER ART 81X PRINCIPLES

6.5.1 Step 1: assumed distribution to individual

6.5.2 Step 2: inclusion of distributions from other companies

6.6 IMPACT ON THE RECEIVING COMPANY

6.6.1 Comparison between (i) deemed proportion of the company distribution and (ii) the allocated share of specified profits, to determine the amount to be attributed to the individual's allocated share of specified profits in the receiving company

6.6.2 Including the amount attributed to the individual's allocated share of specified profits in the receiving company in Arts 81T, 81U, 81V or 81W

6.7 IMPACT ON THE DISTRIBUTING COMPANY

6.7.1 Measure to prevent double counting of profits

7 SHARE TRANSFERS BETWEEN CONNECTED PERSONS

7.1 PURPOSE OF ART 81Y

7.2 WHEN DOES ART 81Y APPLY?

7.2.1 Conditions in Art 81Y(1)

7.2.2 Definition of "connected person"

7.3 CALCULATION OF THE AMOUNT OF THE ALLOCATED SHARE OF SPECIFIED PROFITS TRANSFERRED?

7.3.1 Step1 – calculate individual B's allocated share of specified profits at the time of the transfer

7.3.2 Step 2 – calculate proportion of allocated share of specified profits transferred

7.4 FUTURE DISTRIBUTIONS TO INDIVIDUAL A

7.5 FUTURE DISTRIBUTIONS TO INDIVIDUAL B

8 OBLIGATIONS ON JERSEY COMPANIES

8.1 IDENTIFYING JERSEY RESIDENT INDIVIDUAL SHAREHOLDERS

8.2 CALCULATION OF “SPECIFIED PROFITS”

8.3 COMPANIES WITH NO JERSEY RESIDENT SHAREHOLDERS

8.4 MAINTAIN ACCURATE RECORDS

8.5 ORDERING OF DISTRIBUTIONS

9 TAXPAYER REPORTING [outstanding to be covered in a later draft]

10 OTHER ISSUES

10.1 IMPACT ON FINANCIAL SERVICES COMPANIES

10.2 IMPACT ON UTILITY COMPANIES

10.3 IMPACT ON SCHEDULE A COMPANIES

10.3.1 Basic analysis

10.3.2 Tracking tax credits through holding companies

10.4 RELIEF FOR UK TAX SUFFERED ON UK PROPERTY INCOME

10.5 BROADENING OF CONCESSION TO OTHER INCOME SPECIFICALLY COVERED BY A DTA

10.6 IMPACT ON INDIVIDUALS WHO OWN 2% OR LESS THAN THE ORDINARY SHARE CAPITAL

10.7 APPLICATION OF THE DISTRIBUTION RULES TO ADMINISTRATOR/ EXECUTOR OF AN ESTATE

11 GLOSSARY

APPENDICES

APPENDIX A – Step-by-step guide – what happens the first time a distribution is made to a Jersey resident individual who owns more than 2% of the ordinary share capital on or after 1 January 2013

APPENDIX B – Basic explanatory example

APPENDIX C – A multi-tiered structure – basic explanatory example [to follow in a latter draft]

APPENDIX D – Example of records expected to be maintained by company to identify the nature of the profits/reserves/funds out of which any distribution is made

DRAFT

1. INTRODUCTION

Part 2 of Income Tax (Amendment No. 41) (Jersey) Law 201- contains the Distribution Rules which change the tax treatment applying to distributions from companies.

In very broad terms the Distribution Rules seek to ensure that where:

- a Jersey resident company (or non-resident company with a permanent establishment in Jersey²) has taxable profits which have been taxed at a rate less than 20%; and
- a Jersey resident individual who is a shareholder in that company takes value out of that company which is less than or equal to their share of the taxable profits which have been taxed at a rate less than 20%;

the Jersey resident individual will be subject to income tax on the value which they have taken.

Jersey resident individuals will only be potentially taxable when they take value out of Jersey companies and hence the position under the deemed distribution rules where individuals could be subject to tax where they had received no value has not been replicated. Therefore companies are free to reinvest profits without a tax liability arising on either the company³ or the Jersey resident individual shareholder.

The Income Tax Law now contains a definition of the term “distribution” which makes it clear that broadly any transaction through which a shareholder receives value from a Jersey company will be potentially taxable⁴, including events such as liquidation.

However this does not mean that all “distributions” are taxable. The Distribution Rules set out a series of calculations which seek to identify the individual’s share of the taxable profits which have been taxed at a rate less than 20% (“the individual’s allocated share of specified profits”). Where the amount of a particular distribution is equal to or less than the “individual’s allocated share of specified profits” the distribution is *prima facie* taxable. Any amount of a distribution in excess of the “individual’s allocated share of specified profits” may or may not be taxable; it depends on the nature of the profits/reserves out of which the distribution is made.

It is acknowledged that the calculation of an “individual’s allocated share of specified profits” is a fairly detailed process; taxpayers who do not wish to go through the calculation have the option of applying a “simplified basis of taxation”. Under the “simplified basis of taxation” all distributions are taxable and hence none of the calculations are required. More information on the “simplified basis of taxation”, including information on how to make an election to apply the “simplified basis of taxation”, is contained in section 4 of these guidance notes.

² Throughout the rest of this guide where the term “Jersey resident company” is used this also refers to a non-Jersey resident company with a permanent establishment in Jersey.

³ Assuming that the company is subject to tax at 0%.

⁴ See section 2 of these guidance notes for more information on what is and what is not a distribution from 1 January 2013.

The new rules apply to any distributions made on or after 1 January 2013. For the avoidance of doubt they do not apply to any transactions occurring on or before 31 December 2012. However in order to determine the tax treatment applicable to distributions made on or after 1 January 2013 it may be necessary to look at company profits and dividends paid in the years up to and including the 2012 year of assessment.

DRAFT

2. DEFINITION OF DISTRIBUTION

2.1 BASIC DEFINITION

The Income Tax Law now contains a definition of the term “distribution” in the context of companies.

Legislative reference: the definition of the term “distribution” is in Art 3AE.

The definition of the term “distribution” is broken down into four headings:

- (a) cash dividends paid by a company (including a dividend paid out of capital)

For the avoidance of doubt, a dividend paid out of capital or out of a capital gain made by a company is a “distribution”; however that does not necessarily mean that the taxpayer will be subject to tax on that distribution. Whether that distribution is taxable will depend on the specific circumstances applying to the company and the shareholder.

- (b) any other distributions (whether or not in cash) out of the assets of a company (whether or not in the winding-up of a company or otherwise following its dissolution) in respect of shares in the company to the extent that the amount or value of such distribution exceeds the amount or value of any new consideration received by the company

This heading captures other distributions which the company makes which would not fall within heading (a). For example, the distributions made to a member during the course of a liquidation would fall within heading (b).

For the avoidance of doubt, the use of the word “distribution” in Art 3AE(1)(b) is neither circular nor relates to the company law definition of the word “distribution”, instead it means the effect (or the act or process) of distributing.

- (c) any transfer of the assets of the company for the repayment of, or otherwise, in respect of, an advance of money to the company by a member of the company or by a person connected with a member (whether or not the advance is secured)

This heading means that where a member of a company has made a loan to that company, the repayment of that loan by the company is *prima facie* a distribution. However this heading is subject to an exclusion in respect of the repayment of commercial loans to trading companies (see section 2.4.2 below).

- (d) any transfer of assets or liabilities to the extent not described in sub-paragraph (a), (b) or (c)-
 - (i) by a company to a member, or to a person connected with a member, or
 - (ii) by a member, or by a person connected with a member, to a company,

to the extent that the amount or value of the benefit received by the member, or person connected with a member, exceeds the amount or value of any new consideration given by the member or person connected with a member.

This is broadly a “catch all” provision which seeks to capture those incidents in which value is taken out of a company and which are not captured under the headings already outlined above.

Example 2.1

Mr X owns 100% of the ordinary shares in ABC Ltd, a Jersey resident company. On 30 June 2014 Mr X transfers a personal liability with a value of £1,000 to ABC Ltd, such that ABC Ltd takes on responsibility to settle the liability. Mr X provides ABC Ltd with no consideration for the taking on of that liability.

This transaction would be a distribution under heading (d).

2.2 NEW CONSIDERATION RECEIVED BY THE COMPANY

It should be noted a transaction which falls within either heading (b) or heading (d) are only distributions to the extent that the amount of the distribution/benefit received by the member exceeds the amount or value of any new consideration received by the company.

Example 2.2

Mr X owns 100% of the ordinary shares in ABC Ltd, a Jersey resident company. On 30 June 2014 ABC Ltd transfers ownership of an asset with a market value of £1,000 to Mr X. Mr X provides ABC Ltd with consideration of £750 for the transfer of the asset.

The transfer of the asset to Mr X is *prima facie* a distribution of £1,000 under heading (b). However because Mr X has provided ABC Ltd with consideration of £750, which has not come either directly or indirectly out of the assets of ABC Ltd, the amount of the distribution is reduced to £250 (£1,000 - £750).

For the avoidance of doubt, on a share buy back or share redemption transaction, the transfer of shares by the member to the company will not be regarded as new consideration received by the company and hence the whole of the amount received by the member on such a transaction will be treated as a distribution.

2.3 FROM 1 JANUARY 2013 WHAT WILL BE A “DISTRIBUTION”

The following transactions will be a distribution from 1 January 2013:

- dividends in cash or in specie
- amounts transferred to a member on a liquidation/winding up
- share buy backs
- redemptions of share capital
- transfer of an asset to a member where the consideration given by a member is less than the open market value of the asset transferred
- transfer of a liability from a member to a company where the consideration given by the member is less than the open market value of the liability transferred
- repayments of loans made by a member to a company, other than commercial loans to trading companies

Please note that this list is not exhaustive. Any transaction between a Jersey resident company and its members (persons connected with the members) should be compared against the new definition of “distribution” to determine whether it falls within the definition.

2.4 WHAT IS NOT A “DISTRIBUTION” FROM 1 JANUARY 2013?

The following transactions do not fall within the definition of “distributions” applying from 1 January 2013:

2.4.1 Payment of interest

The Distribution Rules do not seek to change the tax treatment of amounts which are already taxable as interest. Therefore the payment by a company of interest which is *prima facie* taxable on the recipient will not be reclassified as a distribution under the Distribution Rules.

2.4.2 Repayment of commercial loans to trading companies

The repayment of certain commercial loans made by members to trading companies (or companies within a trading group) does not fall within the definition of “distribution”. In order to fall within this exclusion the following conditions have to be met:

Condition (a): condition applying to the terms of the loan

Where the loan has been made on or after 1 January 2013, the loan must have been made on a commercial basis and must remain on a commercial basis until the date that the loan is fully repaid. For the purposes of the 2013 year of assessment the Comptroller is prepared to agree that a loan has been made on a commercial basis provided:

- (a) the loan carries a commercial rate of interest⁵; and
- (b) the terms of the loan have been documented such that they can be provided to the Taxes Office on request.

Where a loan has been made before 1 January 2013 it can fall within the exclusion provided that the loan is on a commercial basis on 1 January 2013 and remains on a commercial basis until the date that the loan is fully repaid. The terms applying to the loan before 1 January 2013 are irrelevant to the application of the exclusion in this context.

The Comptroller is aware of the challenge of documenting the terms of existing loans⁶ before 1 January 2013. Therefore the Comptroller will give taxpayers until 31 December 2013 to document the terms of all existing loans. For the avoidance of doubt, irrespective of the window given by the Comptroller to document the terms of existing loans, the Comptroller still requires that existing loans carry a commercial rate of interest from 1 January 2013 if they wish to fall within the exclusion.

Condition (b): condition applying to the company in receipt of the loan

The loan must be made to a trading company or a company in a trading group and must remain repayable by a trading company or a company in a trading group until the loan is fully repaid.

The terms “trading company” and “trading group” are defined in Schedule A1 of the Income Tax Law. For the avoidance of doubt, a loan made to an investment holding company which is not part of a trading group will not fall within the scope of the exclusion.

Example 2.3

Mr X owns 100% of the ordinary shares in Trade Ltd, a Jersey resident company which undertakes trading activities in the island. Mr X makes a loan to Trade Ltd, the loan is made on a commercial basis.

Neither the interest paid by Trade Ltd to Mr X under the terms of the loan nor the repayment of the loan principal by Trade Ltd to Mr X will be a “distribution”. The interest will be taxable on Mr X under the rules applicable to the taxation of interest. The repayment of the loan principal will not be a taxable event for Mr X.

⁵ In determining a commercial rate of interest taxpayers should review comparable rates of interest that would be offered by independent, commercial lenders. For the avoidance of doubt, an interest free loan will not be considered to be a loan made on a commercial basis.

⁶ In this context “existing loan” means loans advanced on or before 31 December 2012.

2.4.3 Stock dividends

From 1 January 2013 the issue of a “stock dividend” will not be a distribution. For the avoidance of doubt, a “stock dividend” is specifically defined in the Income Tax Law as:

- (a) share capital issued by a company in consequence of the exercise by any person of an option conferred on the person to receive, in respect of shares of the company, either cash or additional share capital;
- (b) bonus share capital issued by a company in respect of shares in the company of a relevant class.

It is acknowledged that, in recent years, the issue of a “stock dividend” has been a taxable event for the recipient of the stock dividend, whilst under the new definition of distribution applying from 1 January 2013 the repayment of share capital is *prima facie* a distribution. This combination of rules results in a risk of double taxation.

To address this risk, where the recipient of a stock dividend was taxed under Art 62B on the value of the stock dividend received, when the capital of that stock dividend is repaid that will not be a distribution (*Legislative reference: Paragraph 14 Schedule 5*). For the avoidance of doubt, only the amount repaid up to amount that was taxed under Art 62B will not be a distribution, any amount repaid in excess of the amount taxable under Art 62B will be considered a distribution and taxed accordingly.

2.4.4 Meeting of expenses/business expenditure

For the avoidance of doubt, where an individual has incurred business expenditure on behalf of a company in which the individual owns more than 2% of the ordinary share capital, and the individual reclaims that business expenditure from the company within a reasonable timeframe and in accordance the company’s standard policies regarding the reclaiming of business expenditure, the event of the company settling the reclaim of business expenditure will not be a distribution within the scope of heading (c)⁷.

2.4.5 Distributions/emoluments left outstanding for a period of time

A distribution is taxable on an individual on the date that the distribution is made. However it is acknowledged that distributions are not always settled immediately. Where a distribution is not settled immediately, the member’s right to receive the distribution is as an ordinary creditor of the company. When the creditor representing the original distribution is subsequently settled, the act of settling the creditor is *prima facie* a distribution which is within the scope of heading (c).

There is no intention for the Distribution Rules to treat what is in effect the “same” transaction as a distribution twice. Hence the Comptroller is prepared to apply the following concession:

⁷ See section 2.1 of these guidance notes for an explanation of heading (c).

Where:

- a distribution has been made and the recipient of that distribution has been taxed on that distribution on receipt;
- the company making the distribution does not immediately settle the distribution such that the member's right to receive the distribution is as an ordinary creditor of the company; and
- at a later date but within the same year of assessment or the year of assessment immediately following the year of assessment in which the distribution was made, the company settles the creditor which represents the original distribution;

the Comptroller will not consider the settling of the creditor which represents the original distribution as a further distribution within heading (c).

Where the creditor which represents the original distribution is settled outside of the timeframe mentioned above, the taxpayer may apply in writing to the Comptroller, outlining the facts and requesting that he treat the settling of the creditor which represents the original distribution as not being a distribution within heading (c). The type of situation in which the Comptroller is likely to agree to apply the concessional treatment is where a dividend was made to and taxed on an individual to prevent the crystallisation of a deemed interim dividend but the company was unable to settle the dividend for cash flow purposes.

The same concessional treatment as outlined above will be applied in the context of emoluments not settled immediately, namely:

Where:

- a company has paid, for tax purposes, emoluments to an individual who owns more than 2% of the ordinary share capital of the company and who is taxed on those emoluments on receipt under Schedule DII;
- the company paying the emoluments does not immediately settle them such that the individual's right to receive the emoluments is as an ordinary creditor of the company; and
- at a later date but within the same year of assessment or the year of assessment immediately following the year of assessment in which the emoluments were made, the company settles the creditor which represents the original emoluments;

the Comptroller will not consider the settling of the creditor which represents the original emoluments as a further distribution within heading (c).

Where the creditor which represents the original emoluments is settled outside of the timeframe mentioned above the taxpayer may apply in writing to the Comptroller outlining the facts and requesting that he treat the settling of the creditor which represents the original emoluments as not being a distribution within heading (c). The type of situation in which the Comptroller is likely to agree to apply the concessional treatment is where a bonus has been paid to reduce the "relevant profits" during the years that the deemed distribution years were in operation to nil to prevent the crystallisation of a deemed interim dividend but the company was unable to settle the emoluments for cash flow purposes.

The Comptroller will keep the operation of this concession under review and will update it further if it is considered necessary.

2.4.6 Amounts taxable under “intermediary services vehicles” rules

Legislative reference: Art 77E(1)

Under the “intermediary services vehicles” rules an individual may be treated as having received, for tax purposes, certain income which arises in a company in which the individual owns shares. If this income were also taxable when it is distributed this would create double taxation.

To address this double taxation, where income arising in a company has been treated as “attributable earnings” for the purposes of the “intermediary services vehicles” rules is distributed, this transaction will not fall within the definition of “distribution” for the purposes of Art 3AE. As a consequence this type of transaction will be a non-taxable event for the member in receipt of the income.

2.5 INTERACTION WITH EMPLOYMENT INCOME

It is acknowledged that the relationship between an individual and a company can be one of member and company or one of employee/director and employer. Where an individual has both relationships with the same company and the individual receives value from the company, the applicable tax treatment depends on whether the value was received in the capacity of employee/director (where upon it will be employment income and *prima facie* taxable under Schedule DII) or in the capacity as a member (where upon it will be a distribution and *prima facie* taxable under Schedule DIX or Schedule DIII).

2.6 TAXATION OF DISTRIBUTIONS FROM NON-JERSEY RESIDENT COMPANIES

The new definition of distribution does not impact on non-Jersey resident companies. The Distribution Rules confirm that only those “distributions” which were taxable under Schedule DV (taxation of income arising from possessions out of Jersey) on or before 31 December 2012 will be taxable under Schedule DV on or after 1 January 2013. Hence the liquidation of a non-Jersey resident company (for example) will not be a taxable distribution for Jersey resident individual on or after 1 January 2013.

Legislative reference: Para 13, Sch 5.

For the avoidance of doubt, distributions from non-Jersey resident companies which have a permanent establishment in Jersey are *prima facie* taxable under Schedule DIX and hence the broader definition of distribution applies in this context.

The Taxes Office continues to look at the issue of individuals using non-Jersey resident companies to avoid tax and where appropriate the Comptroller will use his powers under Art 134A to set aside transactions which are wholly or mainly undertaken for tax avoidance purposes.

DRAFT

3. TAXATION OF DISTRIBUTIONS

Where a Jersey taxpayer is in receipt⁸ of a distribution from a Jersey resident company that distribution is potentially taxable under one of two headings:

- (i) Schedule DIX; or
- (ii) Schedule DIII

These Schedules and the corresponding tax implications are outlined below.

3.1 SCHEDULE DIX

Legislative reference: Art 62(1)

3.1.1 Key points relating to Schedule DIX

1. It only applies to Jersey resident individuals; it does not apply to Jersey resident companies or Jersey resident trustees⁹.
2. Where an individual is taxable under Schedule DIX, the full amount of the distribution received will be taxable irrespective of the nature of the profits/reserves out of which the distribution has been made.
3. Where an individual is taxable under Schedule DIX the individual will not be entitled to a tax credit for Jersey tax already paid by the company making the distribution, the caveat to this comment is that where the company is a “financial services company” and taxable at 10%, a credit for the tax paid by the “financial services company” will be available to the individual.

3.1.2 When is a distribution taxable under Schedule DIX?

A distribution is taxable under Schedule DIX where the amount of a distribution is equal to or less than the “individual’s allocated share of specified profits”. Where the amount of a distribution is greater than the “individual’s allocated share of specified profits”, the distribution is taxable under Schedule DIX up to the value of the “individual’s allocated share of specified profits”; the amount in excess is then taxable under Schedule DIII.

The “individual’s allocated share of specified profits” is an amount which is calculated by reference to the Distribution Rules, these guidance notes provide a detailed explanation of that calculation in sections 5.2, 5.3 and 5.4.

Alternatively taxpayers can elect to apply the “simplified basis of taxation”. Under the simplified basis of taxation all distributions received by a Jersey resident individual are

⁸ For the avoidance of doubt, where shares in a company are held by a nominee shareholder or on a bare trust for a beneficial owner, the beneficial owner of the shares will be treated as the recipient of any distribution for the purposes of the distribution rules.

⁹ The Taxes Office will be monitoring the usage of trusts and the application of Art 134A will be considered in appropriate cases.

taxable under Schedule DIX and hence there is no requirement to calculate the “individual’s allocated share of specified profits”, resulting in an administrative saving.¹⁰

3.2 SCHEDULE DIII

Legislative reference: Art 62(1)

3.2.1 Key points relating to Schedule DIII

1. Only applies to distributions from Jersey resident companies which are not taxable under Schedule DIX.
2. Therefore, as companies and trustees are not taxable under Schedule DIX, Schedule DIII will *prima facie* apply to distributions received by these taxpayers.
3. Where a distribution is taxable under Schedule DIII, the nature of the profits/reserves out of which the distribution has been made may change the tax analysis applying to the recipient, as the Distribution Rules offer a number of exemptions from tax.
4. The recipient will be entitled to a tax credit in respect of any Jersey tax already paid by the company making the distribution; in addition if the recipient is entitled to any tax credits because of the operation of the deemed distribution rules these tax credits will also be available.

Hence from the perspective of the recipient of a distribution, it is more preferable to be taxable under Schedule DIII rather than Schedule DIX, as the distribution may be exempt from tax or the recipient may be entitled to a tax credit for tax paid by the company making the distribution.

3.2.2 Which distributions are exempt from tax under Schedule DIII?

Legislative reference: Art 78(1A)

Distributions will be exempt from tax under Schedule DIII where:

- (a) the distribution is made out of capital profits which have accrued in the company;
- (b) the distribution represents a return of share capital¹¹ where the company received new consideration in respect of the issue of that share capital;
- (c) the distribution represents repayment of the principal amount advanced to the company; or
- (d) so much of the distribution as can be proven to the satisfaction of the Comptroller that has been made out of the same profits as those that have been used to

¹⁰ See section 4 of these guidance notes for more information on the “simplified basis of taxation”.

¹¹ In this context “share capital” includes stated capital of a no par value company and share premium.

determine that an earlier distribution is a relevant distribution for the purposes of Schedule DIX¹²

Example 3.1

Mr X incorporates a Jersey resident company called Home Ltd on 1 June 2009. Mr X funds Home Ltd with £50,000 of ordinary share capital and £350,000 of interest free loan. Home Ltd immediately uses the entire amount of the funds raised (i.e. £400,000) to purchase a residential property in Jersey in which Mr X lives.

On 31 July 2014 Home Ltd sells the residential property for £475,000, realising a capital gain of £75,000. Home Ltd is then liquidated. From the date of incorporation to the date of liquidation, Home Ltd receives no income whatsoever; therefore on liquidation it repays the interest free loan of £350,000 and returns the remaining £125,000 to Mr X as the 100% shareholder.

Both the repayment of the interest free loan and the act of liquidation are distributions and hence *prima facie* taxable. As Home Ltd has received no income, no amount will be taxable under Schedule DIX, therefore the distributions will be taxable under Schedule DIII. However the following exemptions will apply to the amounts distributed and taxable under Schedule DIII:

- repayment of £350,000 interest free loan: exempt from tax as it represents the repayment of the principal amount advanced to the company;
- repayment of £50,000 initial share capital: exempt from tax as it represents a return of share capital where the company received new consideration in respect of the issue of that share capital
- payment of £75,000 to Mr X: exempt from tax as it is made out of capital profits which have accrued in Home Ltd

Therefore the entire £475,000 which Mr X receives from Home Ltd is exempt from tax.

¹² See section 8.5 of these guidance notes for an example which highlights the operation of this exemption.

4. SIMPLIFIED BASIS OF TAXATION

It is acknowledged that the calculation of an individual's allocated share of specified profits as outlined in section 5 of these guidance notes is a fairly detailed process; taxpayers who do not wish to go through the calculation have the option of applying a "simplified basis of taxation".

Under the "simplified basis of taxation" all distributions received by a Jersey resident individual are taxable under Schedule DIX. For the avoidance of doubt, where a distribution is taxable under Schedule DIX, the full amount of the distribution received will be taxable irrespective of the nature of the profits/reserves out of which the distribution has been made. In addition the individual will not be entitled to a tax credit for Jersey tax already paid by the company making the distribution; the caveat to this comment is that where the company is a "financial services company" and taxable at 10%, a credit for the tax paid by the "financial services company" will be available to the individual.

4.1 MAKING THE ELECTION

The simplified basis of taxation is available to individuals by way of election. In respect of the 2013 year of assessment an individual will have until 31 December 2015 to determine which basis of taxation (the simplified basis or the detailed calculations) will apply to distributions received in the 2013 year of assessment.

The formal steps required to make the election will be determined and communicated in the first half of 2013, however the following aspects of the election can be confirmed.

4.1.1 Election is made on a company-by-company basis

The election is made on a company-by-company, rather than one election for all the companies that the individual owns shares in. This is best explained through an example.

Example 4.1

Mr X owns 100% of the ordinary shares in Trade Ltd, a Jersey resident company which undertakes trading activities in the island, and Mr X also 100% of the ordinary shares in Investment Ltd, a Jersey resident investment holding company.

For the 2013 year of assessment Mr X decides to make the election to apply the simplified basis of taxation in respect of distributions made by Trade Ltd. However he does not make the election in respect of Investment Ltd, therefore when distributions are made by Investment Ltd during 2013 there is a requirement to calculate Mr X's allocated share of specified profit Investments Ltd.

Applying a different basis of taxation to companies in this way is permitted

4.1.2 Election applies to one year of assessment only

For the avoidance of doubt, the election is only made in respect of a particular year of assessment. Therefore an individual can choose to apply the simplified basis of taxation for the 2013 year of assessment without being obliged to apply the simplified basis of taxation in the 2014 and subsequent years of assessment.

The changes to the calculation of an individual's allocated share of specified profits (if any) required where an individual applies the simplified basis of taxation in one year of assessment and the detailed calculations in the next year of assessment, will be released in the first half of 2013. It is noted that this issue cannot arise until 1 January 2014 at the earliest, and then a taxpayer will have 31 December 2016 to determine on which basis they wish to be taxed.

4.1.3 Ability to change basis of taxation up to election deadline

The Taxes Office is conscious that an individual is obliged to file their personal tax return in advance of the election deadline. For the avoidance of doubt, the basis of taxation on which the tax return is produced will not be determinative of the basis of taxation that will ultimately apply.

Example 4.2

Mr X owns 100% of the ordinary shares in ABC Ltd, a Jersey resident company. During the 2013 year of assessment Mr X receives a number of distributions from ABC Ltd.

Mr X completes his tax return for the 2013 year of assessment on the assumption that the simplified basis of taxation will apply and submits his tax return on time, in advance of the tax filing deadline. Before 31 December 2015 Mr X decides that it would be more appropriate to complete the detailed calculations and hence in advance of 31 December 2015 Mr X submits updated information showing the amount of taxable distributions if the detailed calculations are completed.

The submission of the tax return which adopts the simplified basis during 2014 does not mean that the simplified basis of taxation must be applied to distributions received during the 2013 year of assessment. However Mr X only has until 31 December 2015 to submit the updated information or else the simplified basis of taxation will be applied.

4.2 WHO MAY ADOPT THE “SIMPLIFIED BASIS OF TAXATION”

The election to adopt the “simplified basis of taxation” is available to all individual taxpayers. It will be up to each individual taxpayer to determine whether it is beneficial to adopt the “simplified basis of taxation” based on their particular circumstances.

It is anticipated that the type of situation in which a taxpayer may consider adopting the “simplified basis of taxation” is a small trading company that distributes its profits on an annual basis and does not accrue capital gains. This is because the amount of tax payable by the owner of such a company who elects to apply the “simplified basis of taxation” should be broadly similar to the amount of tax payable by that owner if the detailed calculation was completed, whilst delivering an administration saving.

DRAFT

5. CALCULATIONS IN THE DISTRIBUTION RULES

If a taxpayer does not make the election to apply the “simplified basis of taxation” they are obliged to complete the calculations laid out in the distribution rules. The aim of these calculations is to establish the “individual’s allocated share of specified profits” at the time of a distribution, so that a comparison can be completed between the “individual’s allocated share of specified profits” and the amount of the distribution such that tax treatment applicable to the distribution can be determined.

5.1 IS IT NECESSARY TO CALCULATE THE “INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS”?

Not all distributions made to Jersey resident individuals require the calculation of the “individual’s allocated share of specified profits”. A distribution to an individual who owns 2% or less of the ordinary share capital of the company will not require the calculation of that “individual’s allocated share of specified profits” as the calculation only applies to Jersey resident individuals who own more than 2% of the ordinary share capital.

Furthermore there are three tests contained in Art 81T(1) which mean that the calculation does not apply to all distributions. The three tests in Art 81T(1) are set out below.

Legislative reference: Art 81T(1)

Test (a): the distribution is made to the individual in or after year of assessment 2013 following a relevant financial period of the company

This confirms that the calculation is only required in the case of a distribution made in year of assessment 2013¹³ and later years of assessment where the company making the distribution has a “relevant financial period”. If the company does not have a “relevant financial period” at the time that the distribution is made, the calculation is not required.

The concept of a “relevant financial period” is a newly introduced concept. The “relevant financial period” means a financial period of the company ending in the year of assessment immediately preceding the year of assessment in which the distribution is made.

Legislative reference: Art 81Q(1)

This concept is best explained through a series of examples.

¹³ This also confirms that no calculation is required in relation to distributions which have occurred during the 2012 year of assessment (or earlier years of assessment).

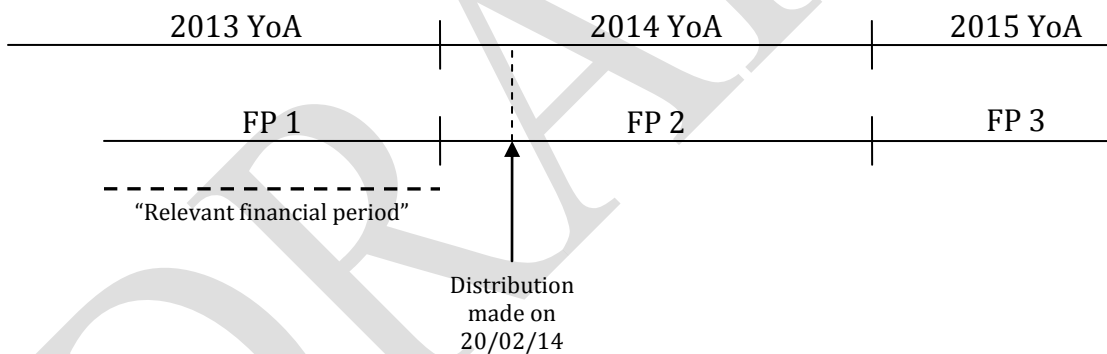
Example 5.1

A Jersey resident company make a distribution to a Jersey resident individual on 1 June 2014 (i.e. in the 2014 year of assessment) the “relevant financial period” is any financial period of the company ending in the 2013 year of assessment. If the company draws up its accounts to 31 March each year, the “relevant financial period” would be the financial period ended 31 March 2013.

Example 5.2

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 April 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter.

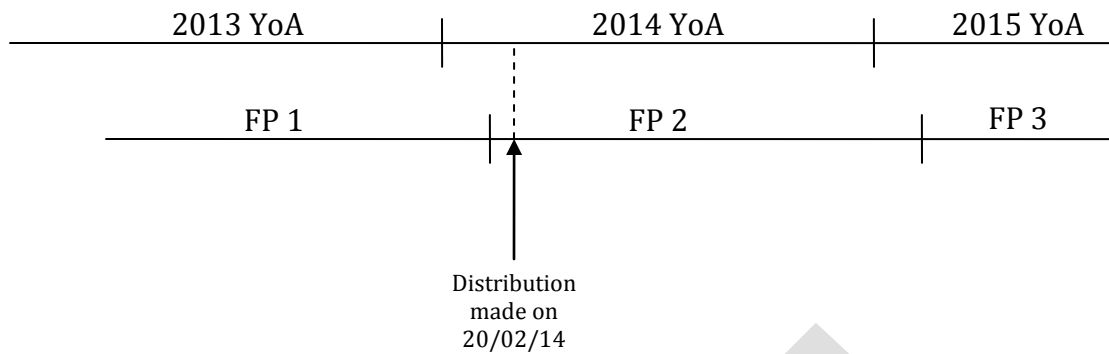
On 20 February 2014 ABC Ltd makes a distribution to Mr X a Jersey resident individual who owns 100% of the ordinary share capital in ABC Ltd.



The distribution is made in the 2014 year of assessment; therefore FP1 (i.e. the financial period ended 31 December 2013) which ends in the 2013 year of assessment (i.e. the year of assessment immediately preceding the year of assessment in which the distribution is made) is the “relevant financial period”.

Example 5.3

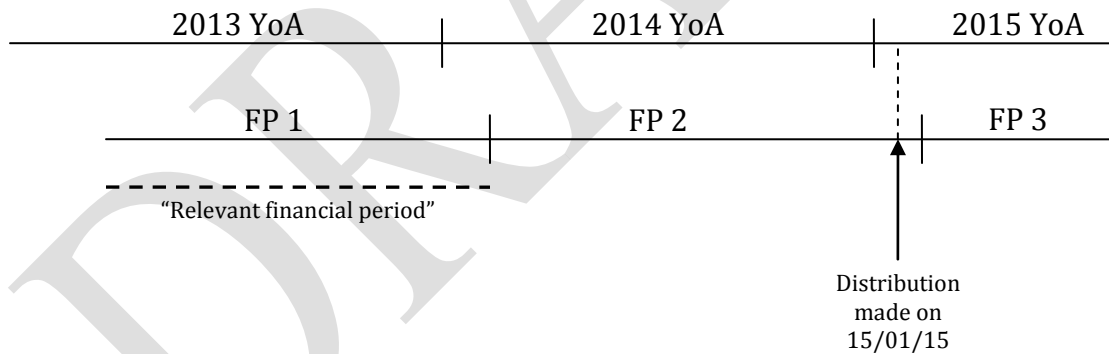
Same as Example 5.2, except that ABC Ltd draws up its first set of accounts to 31 January 2014, and 31 January annually thereafter.



The distribution is made in the 2014 year of assessment. No financial period of the company ends in the 2013 year of assessment and hence at the time that the distribution is made there is no “relevant financial period”.

Example 5.4

Same as Example 5.3, except that ABC Ltd makes a distribution on 15 January 2015



The distribution is made in the 2015 year of assessment; therefore FP1 (i.e. the financial period ended 31 January 2014) which ends in the 2014 year of assessment (i.e. the year of assessment immediately preceding the year of assessment in which the distribution is made) is the “relevant financial period”.

Test (b): the whole or part of that relevant financial period fell within the individual's current period of share ownership

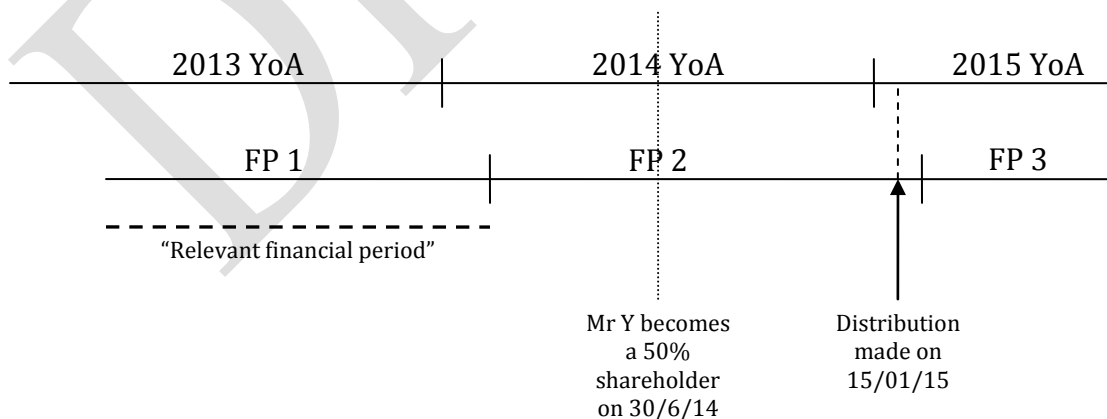
The concept of the individual's current period of share ownership is explored in greater detail below¹⁴, for current purposes it broadly means the period that the particular individual has owned more than 2% of the ordinary share capital of the company. Therefore to meet this test the individual has to have owned more than 2% of the ordinary shares at any point during the "relevant financial period" and has continued to own more than 2% of the ordinary share capital from that point up to the date of the distribution.

This test means that the existence of a "relevant financial period" of the company does not automatically mean that the tests in Art 81T(1) have been met, you have to look at the ownership of ordinary shares in the company by the particular individual. In the vast majority of cases where an individual incorporates a company and continues to own 100% of the ordinary share capital in the company; this test will be met when the company has a "relevant financial period". The application of test (b) is likely to be of more relevance where an individual buys shares in a company following its incorporation.

Example 5.5

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 April 2013 and it draws up its first set of accounts to 31 January 2014, and 31 January annually thereafter.

ABC Ltd is initially owned 100% by Mr X, a Jersey resident individual. On 30 June 2014 Mr X sells 50% of the ordinary share capital to Mr Y, another Jersey resident individual. ABC Ltd makes a distribution on 15 January 2015 to both Mr X and Mr Y.



- Analysis applying to Mr X: he owned more than 2% of the ordinary share capital at a point during the "relevant financial period" and

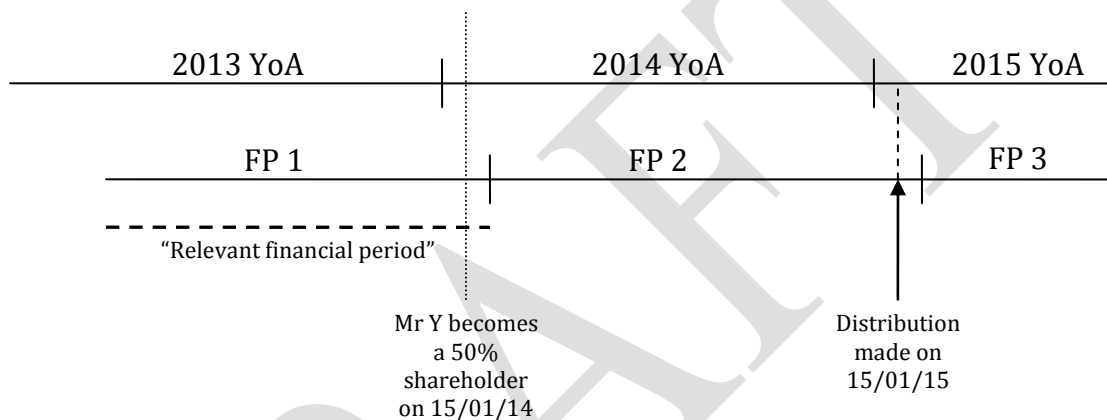
¹⁴ See section 5.4.1 of these guidance notes.

has continued to own more than 2% of the ordinary share capital since that point, hence test (b) has been met in the context of Mr X.

- Analysis applying to Mr Y: he did not own more than 2% of the ordinary share capital at any point during the “relevant financial period” and hence test (b) has not been met in the context of Mr Y.

Example 5.6

Same as Example 5.5 except Mr X sells 50% of the ordinary share capital to Mr Y on 15 January 2014.



- Analysis applying to Mr X: he owned more than 2% of the ordinary share capital at a point during the “relevant financial period” and has continued to own more than 2% of the ordinary share capital since that point, hence test (b) has been met in the context of Mr X.
- Analysis applying to Mr Y: he owned more than 2% of the ordinary share capital at a point during the “relevant financial period” and has continued to own more than 2% of the ordinary share capital since that point, hence test (b) has been met in the context of Mr Y.

Test (c): the distribution is the first distribution made to the individual in the circumstances described in sub-paragraphs (a) and (b)

This test is there to ensure that it is clear that Art 81T only applies to one distribution, earlier distributions do not require a calculation and subsequent distributions are dealt with under Arts 81U, 81V or 81W (as applicable)¹⁵.

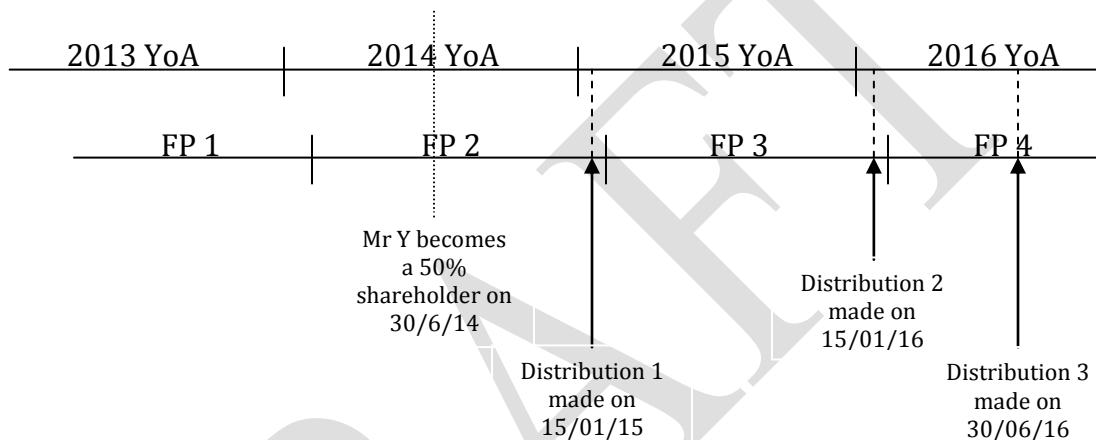
¹⁵ See section 5.6 of these guidance notes.

This test is also best explained through an example.

Example 5.7

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 April 2013 and it draws up its first set of accounts to 31 January 2014, and 31 January annually thereafter.

ABC Ltd is initially owned 100% by Mr X, a Jersey resident individual. On 30 June 2014 Mr X sells 50% of the ordinary share capital to Mr Y, another Jersey resident individual. ABC Ltd makes distributions to its shareholders on 15 January 2015, 15 January 2016 and 30 June 2016.



In the context of Mr Y:

- Distribution 1 made on 15 January 2015:
 - test (a) met (FP 1 is the relevant financial period)
 - test (b) failed (Mr Y did not own more than 2% of the ordinary share capital at any point during FP1)
 - conclusion: calculation under Art 81T is not required
- Distribution 2 made on 15 January 2016:
 - test (a) met (FP2 is the relevant financial period)
 - test (b) met (Mr Y owned more than 2% of the ordinary share capital at a point during FP 2 and has continued to own more than 2% of the ordinary share capital since that point)
 - test (c) met (this is the first distribution made to Mr Y in the circumstances in which both test (a) and test (b) are met)
 - conclusion: calculation under Art 81T is required
- Distribution 3 made on 30 June 2016:
 - test (a) met (FP2 is the relevant financial period)

- test (b) met (Mr Y owned more than 2% of the ordinary share capital at a point during FP 2 and has continued to own more than 2% of the ordinary share capital since that point)
 - test (c) failed (this is the second distribution made to Mr Y in the circumstances in which both test (a) and test (b) are met)
 - conclusion: calculation under Art 81T is not applicable (however in these circumstances the calculation under Art 81U would apply¹⁶)
-

For the avoidance of doubt, Art 81T only applies to the first distribution made to an individual at which time both test (a) and test (b) are met, subsequent distributions to the individual will not require a calculation under Art 81T, but rather a calculation under one of Art 81U, 81V or 81W as appropriate. The application of these Articles is covered in section 5.6. Therefore where test (c) is failed this does not mean that no calculation is required.

5.2 CALCULATION OF THE “INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS”

The following sections of the guidance notes, up to and including section 5.5, assume that the calculation of the “individual’s allocated share of specified profits” under Art 81T is required.

As noted above, in order to determine whether a particular distribution to an individual is taxable under Schedule DIX it is necessary to compare the amount of the distribution to the “individual’s allocated share of specified profits”. The Distribution Rules outline how to calculate the “individual’s allocated share of specified profits”. This has two distinct elements: firstly calculation of the company’s specified profits, and secondly calculation of the particular individual’s allocated share of those specified profits.

5.3 ELEMENT 1: CALCULATION OF “SPECIFIED PROFITS”

Legislative reference: Art 81Q(1)

The calculation of “specified profits” is entirely a calculation relating to the company and its financial performance; who the shareholders are, where they are resident and how many ordinary shares they own does not impact on the calculation of “specified profits”.

¹⁶ See section 5.6 of these guidance notes.

“Specified profits” equates to the income, profits and gains for each financial period on which the company is charged to tax at the rate of 0% or 10%, after the making of any deduction or the giving of any allowance or relief to which the company is entitled under the Income Tax Law.

In calculating its “specified profits” the company can also deduct:

- (i) any preference share dividends paid out of that income, profit and gains before the last day of the following financial period of the company;
- (ii) any distribution which the company has received from another Jersey resident company and brought into its tax computation as taxable income (subject to the comments below); and
- (iii) any amount chargeable to tax under Schedule DIIA as a consequence of the “intermediary services vehicles” rules

Bullet point (ii) above addresses a situation involving “multi-tiered structures”¹⁷, if a structure is not “multi-tiered” this bullet point is not relevant.

For the avoidance of doubt for an amount to be deducted under bullet point (ii) the distribution must be chargeable to tax on the company receiving the distribution. A distribution which is *prima facie* chargeable to tax under Schedule DIII but then is exempt from tax under Art 78(1A)¹⁸ cannot be deducted under bullet point (ii).

A distribution may not be deducted under bullet point (ii) above when the company making the distribution has deducted the distribution when calculating the amount of untaxed profits from the years that the deemed distribution rules were in operation¹⁹. In practice, this restriction will only need to be considered by trading companies/financial services companies, incorporated before 1 January 2012 which paid a dividend to another company during the 2012 year of assessment.

Bullet point (iii) seeks to prevent double taxation where the company falls within the “intermediary services vehicles” rules and, as a consequence, an individual in subject to tax on certain income arising in the company under Schedule DIIA. Under bullet point (iii) the amount which is taxable on an individual under Schedule DIIA can be deducted from “specified profits”.

Therefore “specified profits” is broadly the taxable profits of the company, calculated under the existing tax law, less the three specific amounts indicated above.

For the avoidance of doubt, tax losses available for carry forward under Art 108 and capital allowances will be deductible when calculating a company’s “specified profits”. Furthermore, provided the conditions in Arts 123EA or Art 123F are met, group relief will be available to reduce “specified profits”.

¹⁷ See section 6 of these guidance notes.

¹⁸ See section 3.2.2 of these guidance notes.

¹⁹ See section 5.4.4 of these guidance notes.

Example 5.8

Trade Ltd was incorporated on 1 April 2009 and draws up its first set of accounts to 31 December 2009, and then 31 December annually thereafter.

During its start-up phase Trade Ltd reports losses for tax purposes as follows:

- Financial period ended 31 December 2009: (£15,000)
- Financial period ended 31 December 2010: (£7,000)
- Financial period ended 31 December 2011: (£2,000)

Therefore at 1 January 2012 Trade Ltd has £24,000 of tax losses available for carry forward and offset under Art 108.

In the financial period ended 31 December 2012 Trade Ltd makes a profit, and then continues to trade profitably in later years, reporting taxable profits (before the offset of tax losses) as follows:

- Financial period ended 31 December 2012: £5,000
- Financial period ended 31 December 2013: £8,000
- Financial period ended 31 December 2014: £17,000
- Financial period ended 31 December 2015: £25,000

The “specified profits” for the financial period ended 31 December 2012 and later financial periods would be as follows:

Financial period	Taxable profits before losses	Offset of tax losses	Specified profits	Carried forward tax losses
y/e 31 December 2012	£5,000	(£5,000)	Nil	£19,000
y/e 31 December 2013	£8,000	(£8,000)	Nil	£11,000
y/e 31 December 2014	£17,000	(£11,000)	£6,000	Nil
y/e 31 December 2015	£25,000	Nil	£25,000	Nil

As highlighted in the example above, “specified profits” are calculated in respect of financial periods of the company, not years of assessment.

5.4 ELEMENT 2: CALCULATION OF PARTICULAR INDIVIDUAL'S ALLOCATED SHARE OF SPECIFIED PROFITS

5.4.1 Stage 1 – identification of the financial periods falling within the current period of share ownership

In respect of Jersey resident individual shareholders it is then necessary to calculate that “individual’s allocated share of specified profits”. This element involves determining how much of the “specified profits” identified above should be allocated to the particular individual.

The first stage of this calculation is to identify the financial periods of the company in which the particular individual owned more than 2% of the ordinary share capital of company. Financial periods in which the individual owned 2% or less of the ordinary share capital are irrelevant.

Example: 5.9

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 April 2013 and it draws up its first set of accounts to 31 March 2014, and 31 March annually thereafter.

The specified profits of ABC Ltd for its first five financial periods are outlined below:

- Financial period ended 31 March 2014: specified profits = £12,000
- Financial period ended 31 March 2015: specified profits = £15,000
- Financial period ended 31 March 2016: specified profits = £18,000
- Financial period ended 31 March 2017: specified profits = £21,000
- Financial period ended 31 March 2018: specified profits = £24,000

Mr X, a Jersey resident individual, becomes a 50% shareholder in ABC Ltd on 1 April 2016. Therefore the specified profits arising in ABC Ltd in the financial periods ended 31 March 2014, 2015 and 2016 do not fall within Mr X’s current period of share ownership.

For the avoidance of doubt, if any part of a financial period falls within the current period of share ownership, the whole of the specified profits for that financial period are included. The Distribution Rules do not include a pro-rata calculation to reflect part ownership during financial periods.

Example: 5.10

ABC Ltd is a Jersey resident company which is taxed at 0%. It draws up its accounts to 30 June annually.

Mr X, a Jersey resident individual, acquires 40% of the ordinary shares in ABC Ltd on 15 April 2013. The financial period of ABC Ltd which ends on 30 June 2012 (i.e. year ended 30 June 2012) does not fall within Mr X's current period of share ownership, as at no point during that financial period did he own more than 2% of the ordinary share capital in ABC Ltd.

Mr X did however own 40% of the ordinary share capital in ABC Ltd at a point during the financial period which ends on 30 June 2013, and hence the whole of the specified profits arising in the financial period ending on 30 June 2013 falls within his current period of share ownership.

This calculation is further refined in that you only need to identify the financial periods of the company in which the particular individual owned more than 2% of the ordinary share capital which fall within the shareholder's "current period of share ownership". The term "share ownership" refers to the period during which a person owns more than 2% of the ordinary share capital of the company, therefore the current period of share ownership means the period since the previous time that the individual owned 2% or less of the ordinary share capital of the company.

Ordinarily the current period of share ownership will be easy to identify, if the individual was a founding shareholder and has always owned more than 2% of the ordinary share capital, the current period of share ownership commenced on the date that the company was incorporated. If the individual purchased 10% of the ordinary shares in a company on 15 May 2012 and their shareholding has not changed since that date, the current period of share ownership commenced on 15 May 2012. However it is acknowledged that there can be more complicated situations:

Example 5.11

An individual acquires 50% of the ordinary shares in a company on 1 November 2009, he then sells his entire shareholding on 15 January 2011, and he then reacquires 10% of the ordinary shares on 30 June 2012. The "current period of share ownership" commenced on 30 June 2012 and the financial periods which have been completed before 30 June 2012 do not fall within the current period of share ownership.

5.4.2 Stage 2 – identification of the "relevant financial period"

Legislative reference: Art 81Q(1)

The concept of the "relevant financial period" has been covered in section 5.1 of these guidance notes. The examples in that section will help in the identification of the relevant financial period.

5.4.3 Stage 3 – summation of the specified profits of the financial periods falling within the current period of share ownership, up to and including the relevant financial period

Legislative reference: Art 81T(2)(a)

The rules then require that the “specified profits” of the company for each of the financial periods which fall within the individual’s “current period of share ownership”, up to and including the “relevant financial period”, are added together.

Treatment of “specified profits” arising in financial periods ending on or before 31 December 2011

It is acknowledged that the “specified profits” arising in certain financial periods have already been taxed (either at the level of the company or at the level of the shareholder). The Distribution Rules reflects this by, broadly²⁰, excluding from the calculation any profits arising in a financial period ending on or before 31 December 2011.

Legislative reference: Art 81T(2)(a) definition of SP in Step 1 specifically excludes “any profits for a financial period ending on or before 31st December 2011”.

Please note, the repeal of the deemed distribution rules involved the creation of a deemed financial period ending on 31 December 2011 for all companies which did not have a financial period already ending on that date. The profits arising in that deemed financial period will be excluded from the summation of “specified profits” outlined above.

Example 5.12

ABC Ltd is a Jersey resident company which is taxable at 0%. It draws up its accounts to 31 March annually. Its specified profits for both its accounting periods and its financial periods are outlined below:

²⁰ See section 5.5.4 of these guidance notes regarding untaxed profits arising in the years that the deemed distribution rules were in operation.

Accounting period	y/e 31/03/11	y/e 31/03/12		y/e 31/03/13
Specified profit	£100,000	£120,000		£140,000
Financial period	FP ended 31/03/11	Deemed FP ended 31/12/11	Deemed FP ended 31/03/12	FP ended 31/03/13
Specified profit	£100,000	£90,000	£30,000	£140,000
Included or excluded?	Excluded because FP ended on or before 31/12/11	Excluded because FP ended on or before 31/12/11	Included because FP ended after 31/12/11	Included because FP ended after 31/12/11

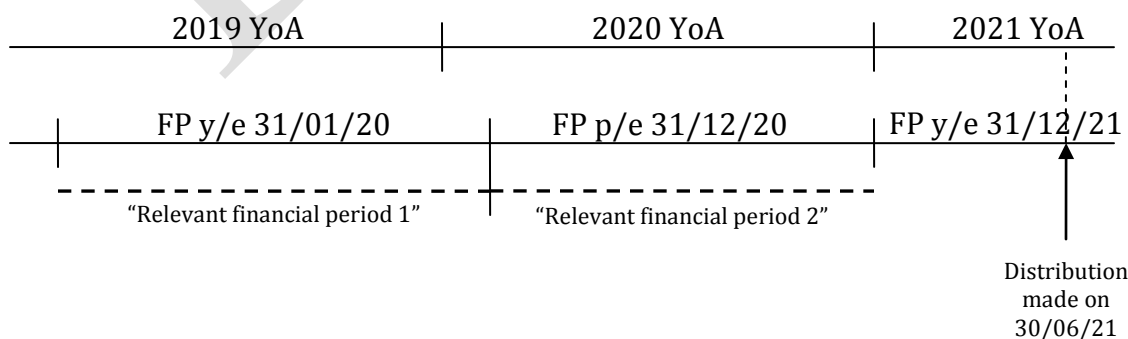
More than one “relevant financial period”

It is noted that a company could have two financial periods ending in the year of assessment immediately preceding the year of assessment in which the distribution is made. Where this occurs both of these financial periods are taken into account when identifying the financial periods to be included within the summation of “specified profits” outlined above.

Example 5.13

ABC Ltd is a Jersey resident company, ABC Ltd is taxed at 0%. It is incorporated on 1 April 2013 and it draws up its first set of accounts to 31 January 2014, and 31 January annually thereafter.

ABC Ltd subsequently decides to change its accounting date to 31 December, and correspondingly draws up a set of accounts from 1 February 2020 to 31 December 2020. ABC Ltd makes a distribution on 30 June 2021.



Both the financial period ended on 31 January 2020 and the financial period ended on 31 December 2020 are “relevant financial periods” (i.e. they are financial periods which end in the year of assessment immediately preceding the year of assessment in which the distribution has been made). For the purposes of the summation of specified profits, the specified profits of both these financial periods will be included.

The following example highlights how the summation of “specified profits” works.

Example 5.14

ABC Ltd is a Jersey resident company which is taxable at 0%. It was incorporated on 1 July 2010 and it draws its first set of accounts to 30 June 2011, and 30 June annually thereafter.

ABC Ltd makes a distribution on 30 September 2015. ABC Ltd’s specified profits are outlined below, together with the summation of specified profits for the purposes of the distribution made on 30 September 2015:

Financial period	Specified profits for FP	Included or excluded?	Summation of specified profits
FP ended 30/06/11	£10,000	Excluded: FP ended on or before 31/12/11	Nil
Deemed FP ended 31/12/11	£7,500	Excluded: FP ended on or before 31/12/11	Nil
Deemed FP ended 30/06/12	£7,500	Included	£7,500
FP ended 30/06/13	£20,000	Included	£20,000
FP ended 30/06/14	£25,000	Included – this is the relevant financial period	£25,000
FP ended 30/06/15	£30,000	Excluded – FP is after the relevant financial period	Nil
			£52,500

5.4.4 Stage 4 – treatment of untaxed profits under the deemed distribution rules

This section of the guidance notes can be ignored where:

- (a) the company making the distribution was incorporated on or after 1 January 2012;
or
- (b) if the company making the distribution was incorporated before 1 January 2012, on 31 December 2011 it was a company subject to the full attribution rules (i.e. investment holding companies or a “personal services company” which was within the scope of the full attribution rules); or
- (c) if the company making the distribution was incorporated before 1 January 2012 and on 31 December 2011 it was a trading company or a financial services company, no Jersey resident individual “owned”²¹ more than 2% of the ordinary share capital of the company at any point between 3 June 2008 and 31 December 2011.

For the avoidance of doubt, it is possible that the circumstances in (a), (b) or (c) do not apply yet the amount calculated under Stage 4 is nil. The list above has been included so that taxpayers who are in those circumstances in which Stage 4 clearly does not apply can ignore this section of the guidance notes and move on to Stage 5.

Legislative reference: Art 81T(5) and Paragraphs 11 and 12 of Schedule 5

The simple approach of excluding specified profits of financial periods ending on or before 31 December 2011 from the calculation is appropriate in the context of companies which were subject to the full attribution rules (such as investment holding companies). The full attribution rules sought to tax all of the “relevant profits” of investment holding companies which related to Jersey resident shareholders up to 31 December 2011. However the deemed distribution rules did not ensure that all the “relevant profits” of trading companies²² were fully taxed.

The Distribution Rules seek to take account of this by including in the calculation the individual’s proportion of the untaxed profits arising in trading companies from the years that the deemed distribution rules were in operation. The amount that needs to be included in the calculation under Stage 4 is calculated in paragraph 11 (applies to trading companies subject to tax at 0%) and paragraph 12 (applies to trading companies subject to tax at 10%) of Schedule 5. For the avoidance of doubt, companies which were investment holding companies immediately prior to 1 January 2012 do not need to calculate an amount under Stage 4.

In summary Paragraphs 11 and 12 are seeking to identify the untaxed “relevant profits” from the years that the deemed distribution rules were in operation. Therefore a trading company which has distributed *all* of its relevant profits on an annual basis in order to

²¹ In this context the term “owned” refers to the broad definition of that term set out in Art 82A.

²² For the avoidance of doubt, “trading companies” in this context includes trading companies subject to tax at 0% and financial services companies subject to tax at 10%, it specifically excludes companies which were subject to tax under the full attribution rules.

avoid the crystallisation of a deemed distribution will calculate a nil amount under Paragraphs 11 and 12.

Paragraphs 11 and 12 are fairly complicated but this is a result of the fact that an individual may have paid tax by way of a deemed interim distribution, an actual distribution or a deemed final distribution. They work by identifying each financial period of the company which fell within the years that the deemed distribution rules were in operation. Each of these financial periods is then looked at individually to determine if an amount exists in respect of that financial period. The amounts for each of those financial periods are then added together.

Calculation under Paragraph 11 – trading companies taxed at 0%

Under Paragraph 11 it is firstly necessary to calculate the “relevant profits”²³ for the financial period. Secondly, the relevant profits are multiplied by 60%. Then that figure is compared to the amount of dividends paid out of *those* profits before 1 January 2013. Please note, that the dividends which can be taken into account in this comparison is broader than the definition of “relevant dividends”²⁴ under the deemed distribution regime.

If:

1. the amount of dividends paid out before 1 January 2013 is greater than 60% of the relevant profits – the amount to be taken into account is the “relevant profits” less the dividends paid out of those profits and any deemed final dividend paid or issued out of those profits
2. the amount of dividends paid out before 1 January 2013 is less than 60% of the relevant profits – the amount to be taken into account is 40% of the relevant profits less any deemed final dividend paid or issued out of those profits

Example 5.15

ABC Ltd is a Jersey resident company which undertakes trading activities in the island, ABC Ltd is taxed at 0%. It was incorporated on 1 February 2009 and it draws up its first set of accounts to 31 January 2010, and 31 January annually thereafter. The taxable profits of ABC Ltd, the dividends paid by ABC Ltd and the amount calculated under Paragraph 11 are outlined below.

²³ The term “relevant profits” was defined in Art 81B(1), although this Article was repealed as part of the repeal of the deemed distribution regime, Paragraphs 11(2) and 12(2) confirm that, for the purposes of those paragraphs, the definition of that term and other terms from the deemed distribution regime continues to apply.

²⁴ Also defined in Art 81B(1).

Accounting period	y/e 31/01/10	y/e 31/01/11	y/e 31/01/12		y/e 31/01/13
Taxable profits	£60,000	£90,000	£120,000		£150,000
Financial period	FP ended 31/01/10	FP ended 31/01/11	Deemed FP ended 31/12/11	Deemed FP ended 31/01/12	FP ended 31/01/13
Relevant profit	£60,000	£90,000	£110,000	N/A	N/A
Relevant profit x 60%	£36,000	£54,000	£66,000		
Dividends paid out of those profits before 01/01/13	(£30,000)	(£80,000)	(£55,000) ²⁵	N/A	N/A
Which is greater?	Relevant profit x 60%, so apply rule in para 11(4)	Dividends paid, so apply rule in para 11(5)	Relevant profit x 60%, so apply rule in para 11(4)	N/A	N/A
Amount calculated	£60,000 – (£60,000 x 60%) = £24,000	£90,000 – £80,000 = £10,000	£110,000 – (£110,000 x 60%) = £44,000		

Therefore in the context of ABC Ltd the amount to be included in the calculation under Stage 4 is £78,000 (£24,000 + £10,000 + £44,000).

Calculation under Paragraph 12 – financial services companies taxed at 10%

In the context of financial services companies, which were not subject to deemed interim dividends, the calculation is more straightforward. Firstly it is necessary to calculate the

²⁵ The company had taxable profits of £120,000 for the year ended 31 January 2012 and paid dividends of £60,000 out of those profits before 1 January 2013. Both the company's taxable profits and the dividends paid have been allocated between the two deemed financial periods as follows:

Deemed FP ended 31 December 2011 (11/12th) = relevant profits of £110,000 and dividends of £55,000

Deemed FP ended 31 January 2012 (1/12th) = relevant profits of £10,000 and dividends of £5,000

“relevant profits”²⁶ for each financial period. You can then deduct from that figure any dividends paid out of *those* profits before 1 January 2013 and any deemed dividend paid or issued out of those profits.

Example 5.16

ABC Ltd is a Jersey resident financial services company which undertakes trading activities in the island, ABC Ltd is taxed at 10%. It was incorporated on 1 February 2009 and it draws its first set of accounts to 31 January 2010, and 31 January annually thereafter.

The taxable profits of ABC Ltd, the dividends paid by ABC Ltd and the amount calculated under Paragraph 12 are outlined below.

Accounting period	y/e 31/01/10	y/e 31/01/11	y/e 31/01/12		y/e 31/01/13
Taxable profits	£60,000	£90,000	£120,000		£150,000
Financial period	FP ended 31/01/10	FP ended 31/01/11	Deemed FP ended 31/12/11	Deemed FP ended 31/01/12	FP ended 31/01/13
Relevant profit	£60,000	£90,000	£110,000	N/A	N/A
Dividends paid out of those profits before 01/01/13	(£30,000)	(£80,000)	(£55,000) ²⁷	N/A	N/A
Amount calculated	£60,000 – £30,000 = £30,000	£90,000 – £80,000 = £10,000	£110,000 – £55,000 = £55,000		

²⁶ The term “relevant profits” was defined in Art 81B(1), although this Article was repealed as part of the repeal of the deemed distribution regime, Paragraphs 11(2) and 12(2) confirm that, for the purposes of those paragraphs, the definition of that term and other terms from the deemed distribution regime continues to apply.

²⁷ The company had taxable profits of £120,000 for the year ended 31 January 2012 and paid dividends of £60,000 out of those profits before 1 January 2013. Both the company’s taxable profits and the dividends paid have been allocated between the two deemed financial periods:

Deemed FP ended 31 December 2011 (11/12th) = relevant profits of £110,000 and dividends of £55,000

Deemed FP ended 31 January 2012 (1/12th) = relevant profits of £10,000 and dividends of £5,000

Therefore in the context of ABC Ltd the amount to be included in the calculation under Stage 4 is £95,000 (£30,000 + £10,000 + £55,000).

Share ownership requirement

Both Paragraphs 11 and 12 only apply where the particular individual's current period of share ownership in the company started before 1 January 2012, and there is only the need to include the amount from financial periods in which the individual, at any point during that financial period, owned more than 2% of the ordinary share capital.

Example 5.17

Same facts as for Example 5.15 except for the fact that Mr X, a Jersey resident individual, became a shareholder in ABC Ltd on 1 January 2011. The amount to be included in the calculation under Stage 4 in respect of Mr X would be £54,000 (£10,000 + £44,000). The £24,000 for the financial period ended 31 January 2010 would not be included because Mr X did not own more than 2% of the ordinary share capital in ABC Ltd at any point during that financial period.

5.4.5 Stage 5 – scaling calculation

This requires the amount calculated in Stage 3 to be added to the amount calculated under Stage 4 (if any) and then subjects that total to the following scaling calculation.

(Summation of specified profits from Stage 3 + amount calculated under Stage 4)
x A/B

Where A = the number of shares owned by the Jersey resident individual shareholder on the date that the distribution is made

Where B = the number of ordinary shares of the company on the date that the distribution is made

5.4.6 Stage 6 – P-Q formula

Legislative reference: Art 8IT(2)(b)

The P-Q formula has been created for the benefit of taxpayers. Without the P-Q formula it is possible that individuals could pay excessive amounts of tax, as the following example demonstrates.

Example 5.18

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 February 2014 and it draws up its first set of accounts to 31 January 2015, and 31 January annually thereafter. Mr X, a Jersey resident individual, owns 100% of the ordinary share capital in ABC Ltd.

In the year ended 31 January 2015 the company reports “specified profits” of £12,000 and it decides to make an £8,000 distribution to Mr X on 30 September 2015 out of those profits. No calculation under Art 81T is required in respect of the distribution made on 30 September 2015 because at the time of the distribution ABC Ltd does not have a “relevant financial period”, hence Mr X will not have an allocated share of specified profits and the distribution will not be taxable under Schedule DIX.

However the distribution will be taxable under Schedule DIII and as the distribution has been made out of non-exempt profits²⁸, it will be fully taxable on Mr X.

In the year ended 31 January 2016 the company reports “specified profits” of £1,000 and a capital gain of £5,000, it decides to make a £7,000 distribution to Mr X on 30 September 2016. Art 81T will apply to the distribution made on 30 September 2016 because at that time the three tests in Art 81T(1) will have been met²⁹. Without the P-Q formula Mr X’s allocated share of specified profits would be £12,000 (the specified profits for the year ended 31 January 2015) and hence the whole amount of the distribution on 30 September 2016 would be taxable under Schedule DIX.

However with the P-Q formula the following analysis is applied:

- P = £12,000 the amount that would be calculated applying the calculation up to and including Stage 5
- Q = £8,000 the distribution made to and taxed on Mr X under Schedule DIII on 30 September 2015
- P-Q = £4,000

As the amount of £4,000 is less than the amount of the distribution made on 30 September 2016 (£7,000), Mr X’s allocated share of specified profits is £4,000 on 30 September 2016 (because this is greater than £0).

Therefore only £4,000 of the distribution is taxable under Schedule DIX. This is logical because at the time the distribution is made on 30 September 2016 the Distribution Rules seek to ensure that £12,000 (the

²⁸ A list of distributions exempt from tax under Schedule DIII is provided in section 3.2.2 of these guidance notes.

²⁹ See section 5.1 of these guidance notes for further information on the three tests in Art 81T(1).

specified profits that arise in the financial period ended 31 January 2015) have been taxed, which they have: £8,000 by way of the distribution on 30 September 2015 and £4,000 by way of the distribution on 30 September 2016.

Therefore the company could make £3,000 (£7,000 - £4,000) of the distribution on 30 September 2016 from the capital gain reported by the company, and because it is taxable under Schedule DIII, rather than Schedule DIX, that element of the distribution would be exempt from taxation in the hands of the Mr X under Art 78(1A)(a).

As demonstrated above the P-Q formula has been structured such that the taxpayer is protected from paying excessive amounts of tax. It is most likely to apply in situations where distributions are made in the early years of a company or when an individual becomes a shareholder in an existing company and receives a distribution shortly after becoming a shareholder.

5.4.7 Stage 7 – determination of the particular individual’s allocated share of specified profits

Legislative reference: Art 81T(2)(c), (3) and (4)

Following completion of the P-Q formula it is then possible to calculate the individual’s allocated share of specified profits.

If the amount calculated by virtue of the P-Q formula is greater than, or equal to, the amount of the distribution, the “individual’s allocated share of specified profits” is the amount calculated at Stage 5.

If the amount calculated by virtue of the P-Q formula is less than the amount of the distribution, the “individual’s allocated share of specified profits” is the higher of: (a) the amount calculated by virtue of the P-Q formula; or (b) nil.

Option (b) is included because the amount calculated by virtue of the P-Q formula can be a negative figure.

Example 5.19

ABC Ltd is a Jersey resident company which undertakes trading activities in the island, ABC Ltd is taxed at 0%. It is incorporated on 1 February 2014 and it draws up its first set of accounts to 31 January 2015, and 31 January annually thereafter. Mr X, a Jersey resident individual, owns 100% of the ordinary share capital in ABC Ltd.

In the year ended 31 January 2015 the company reports accounting profits of £14,000 but “specified profits” of only £12,000 (the difference relating to capital allowances exceeding depreciation). ABC Ltd makes a £14,000 distribution to Mr X, representing all of the accounting profits from the financial period ended 31 January 2015.

No calculation under Art 81T is required in respect of the distribution made on 30 September 2015 because at the time of that distribution ABC Ltd does not have a “relevant financial period”, hence Mr X will not have an allocated share of specified profits and the distribution will not be taxable under Schedule DIX.

However the distribution will be taxable under Schedule DIII and as the distribution has been made out of non-exempt profits³⁰, it will be fully taxable on Mr X.

In the year ended 31 January 2016 the company reports “specified profits” of £5,000 and a capital gain of £5,000, it decides to make a distribution of £7,000 to Mr X on 30 September 2016. Art 81T will apply to the distribution made on 30 September 2016 because at that time the three tests in Art 81T(1) will have been met³¹.

At the time of the distribution made on 30 September 2016 the amount calculated under Stage 5 will be £12,000 (the specified profits for the financial period ended 31 January 2015). Therefore the value of P will be £12,000 and the value of Q will be £14,000 (the amount of the distribution made on 30 September 2015 which is subject to tax under Schedule DIII). Therefore amount calculated by virtue of the P-Q is *minus* £2,000.

As the amount calculated by virtue of the P-Q formula is a negative figure, the individual’s allocated share of specified profits at the time of the distribution made on 30 September 2016 will be nil.

5.5 COMPARISON OF DISTRIBUTION TO THE INDIVIDUAL’S ALLOCATED SHARE OF SPECIFIED PROFITS

Once the individual’s allocated share of specified profits has been determined, all that is required is a comparison between the amount of the distribution³² and the individual’s

³⁰ A list of distributions exempt from tax under Schedule DIII is provided in section 3.2.2 of these guidance notes.

³¹ See section 5.1 of these guidance notes for further information on the three tests in Art 81T(1).

³² Where the distribution is not made in cash, the amount of the distribution will be the market value of the distribution at the time it is made.

allocated share of specified profits as this comparison between the two amounts will determine the tax treatment applicable to the distribution.

If the individual's allocated share of specified profits is greater than, or equal to, the amount of the distribution, the whole of the distribution is a "relevant distribution". As a consequence the whole amount of the distribution will be taxable under Schedule DIX³³.

If the individual's allocated share of specified profits is less than the amount of the distribution, the amount of the distribution equal to the individual's allocated share of specified profits will be a "relevant distribution" and hence taxable under Schedule DIX and the remainder will be taxable under Schedule DIII³⁴.

For the avoidance of doubt, if the individual's allocated share of specified profits is nil, the whole of the distribution will be taxable under Schedule DIII.

5.6 SUBSEQUENT DISTRIBUTIONS WHICH FALL WITHIN THE SCOPE OF THE DISTRIBUTION RULES

5.6.1 Which Article applies?

For the avoidance of doubt, Art 81T only applies to the first distribution made to an individual from a company which meets the three tests in Art 81T(1). At the time of the second distribution it is necessary to look at Art 81U, Art 81V or Art 81W and determine which one applies. They apply in the following circumstances:

- (a) Art 81U: a distribution made in the same year of assessment as a distribution to which Art 81T applies
- (b) Art 81V: the first distribution in any year of assessment after the year of assessment in which a calculation under Art 81T was completed
- (c) Art 81W: a distribution made in the same year of assessment as a distribution to which Art 81V applies

Only one of these Articles can apply to a particular distribution. For example, if Art 81V applies to a distribution, Arts 81U and 81W cannot apply to that distribution. Furthermore after the first year of assessment in which a distribution is made, Art 81U can no longer apply and hence the articles which will most frequently apply are Arts 81V and 81W.

³³ The consequences of a distribution being taxable under Schedule DIX are outlined in section 3.1 of these guidance notes.

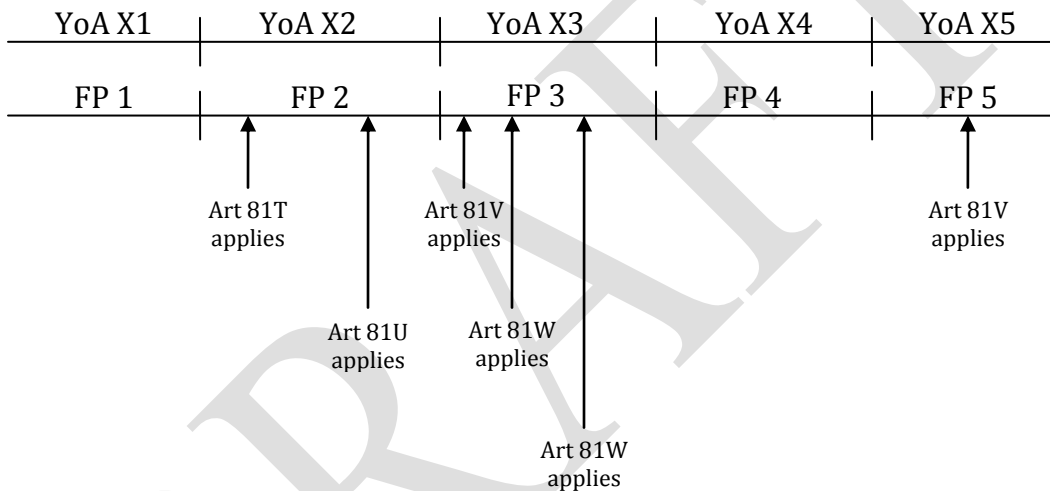
³⁴ The consequences of a distribution being taxable under Schedule DIII are outlined in section 3.2 of these guidance notes.

Example 5.20

ABC Ltd is a Jersey resident company, which is owned 100% by Mr X, a Jersey resident individual. The company draws up its accounts to 31 December annually.

The company makes its first distribution during its second financial period. It makes a further distribution during that financial period. During its third financial period the company makes three distributions. The company next makes a distribution during its fifth financial period.

The timeline below highlights which Article applies at the time of each distribution:



In the context of this example Art 81U can only apply in the second financial period.

The analysis is slightly more difficult where the company's accounting date is not 31 December, as the following example demonstrates.

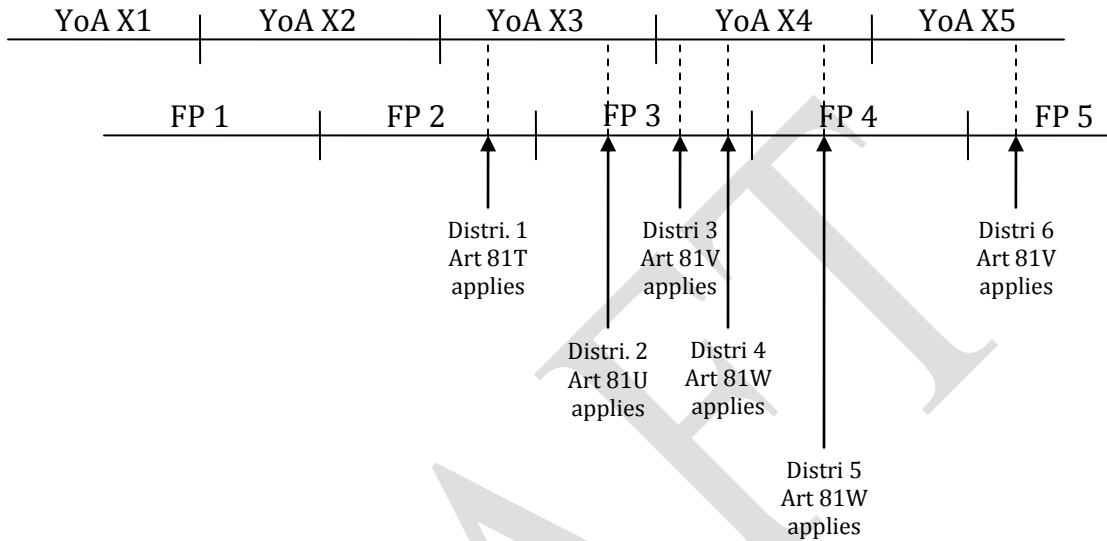
Example 5.21

ABC Ltd is a Jersey resident company, which is owned 100% by Mr X, a Jersey resident individual. The company draws up its accounts to 30 June annually.

The company makes its first distribution during its second financial period. During its second financial period the company makes three

distributions. The company makes one distribution during its fourth financial period and one distribution during its fifth financial period.

The timeline and narrative below highlights which Article applies at the time of each distribution:



- Distribution 1 – first distribution which meets the three tests in Art 81T(1) and hence Art 81T applies
- Distribution 2 – distribution is made in the same year of assessment as a distribution to which Art 81T applies and hence Art 81U applies
- Distribution 3 – distribution is the first distribution made in a year of assessment following a year of assessment in which a distribution to which Art 81T applied (i.e. Distribution 1) and hence Art 81V applies
- Distribution 4 – distribution is made in the same year of assessment as a distribution to which Art 81V applies and hence Art 81W applies
- Distribution 5 – distribution is made in the same year of assessment as a distribution to which Art 81V applies and hence Art 81W applies
- Distribution 6 - distribution is the first distribution made in a year of assessment following a year of assessment in which a distribution to which Art 81T applied (i.e. Distribution 1) and hence Art 81V applies

As demonstrated in the example above it is the year of assessment in which the distribution is made which is the key to determining which of the Articles applies, not the financial period in which the distribution is made.

5.6.2 Chronological order approach – “immediately previous relevant time”

Each of Arts 81U, 81V and 81W follow a chronological order. In other words at the time of the second distribution you are required to look back to the first distribution to gather some information relevant to the calculation; at the time of the third distribution you are required to look back to the second distribution (but not the first distribution) to gather some information relevant to the calculation. And so on.

The words “immediately previous relevant time” which are used frequently throughout Arts 81U, 81V and 81W mean that you have to look back to the last distribution made to that individual. Distributions made to other shareholders are irrelevant.

Example 5.22

ABC Ltd is a Jersey resident company which is taxable at 0%. ABC Ltd is incorporated on 1 January 2013 and draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter.

For *bona fide* commercial reasons ABC Ltd’s ordinary share capital is split into “A” shares and “B” shares. The “A” shares, which represent 70% of the ordinary share capital, are owned by Mr X. The “B” shares, which represent 30% of the ordinary share capital, are owned by Mr Y.

ABC Ltd makes the following distributions:

- 30 June 2015 – distribution on “A” shares
- 31 March 2016 – distribution on “A” shares
- 30 September 2016 – distribution on “B” shares
- 15 April 2017 – distribution on “A” shares
- 15 June 2017 – distribution on “A” shares
- 31 July 2018 – distribution in “B” shares

The analysis applying to Mr X (owner of the “A” shares) is as follows:

- Distribution made on 30 June 2015 – first distribution to Mr X which meets the three tests in Art 81T(1) and hence Art 81T applies.
- Distribution made on 31 March 2016 – distribution is the first distribution made to Mr X in a year of assessment following a year of assessment in which a distribution was made to Mr X to which

- Art 81T applied. Hence Art 81V applies and the “immediately previous relevant time” is the distribution made on 30 June 2015.
- Distribution made on 15 April 2017 – distribution is the first distribution made to Mr X in a year of assessment following a year of assessment in which a distribution was made to Mr X to which Art 81T applied. Hence Art 81V applies and the “immediately previous relevant time” is the distribution made on 31 March 2016. The distribution made to Mr Y on 30 September 2016 is irrelevant.
 - Distribution made on 15 June 2017 – distribution is made in the same year of assessment as a distribution made to Mr X to which Art 81V applies. Hence Art 81W applies and the “immediately previous relevant time” is the distribution made on 15 April 2017.

The analysis applying to Mr Y (owner of the “B” shares) is as follows:

- Distribution made on 30 September 2016 – first distribution to Mr Y which meets the three tests in Art 81T(1) and hence Art 81T applies.
- Distribution made on 31 July 2018 – distribution is the first distribution made to Mr Y in a year of assessment following a year of assessment in which a distribution was made to Mr Y to which Art 81T applied. Hence Art 81V applies and the “immediately previous relevant time” is the distribution made on 30 September 2016. The distributions made to Mr X on 15 April 2017 and 15 June 2017 are irrelevant.

5.6.3 Calculation structure

Each of Arts 81U, 81V and 81W follow the same calculation structure as outlined below:

Stage 1 – identify the amount of individual’s allocated share of specified profits remaining from the “immediately previous relevant time”

Identify the “individual’s allocated share of specified profits” at the “immediately previous relevant time” (called “X” in each of the Articles) and subtract from it the amount of the “relevant distribution”³⁵ made at the “immediately previous relevant time” (called “Y” in each of the Articles)³⁶.

³⁵ In other words, the amount of the distribution at the immediately previous relevant which was taxable under Schedule DIX.

³⁶ For the avoidance of doubt, any of the figures at the “immediately previous relevant time” could be nil, it depends on the circumstances applying at the time of the last distribution made to the individual.

Stage 2 – application of scaling calculation

If the current proportion of ordinary shares owned by the individual (i.e. on the date that the current distribution is made) is the same as the proportion of ordinary shares owned by the individual at the “immediately previous relevant time”³⁷, no adjustment to the amount calculated in Stage 1 is required.

If the current proportion of ordinary shares owned by the individual is different to the proportion of ordinary shares owned by the individual at the “immediately previous relevant time”, a scaling calculation is applied to the amount calculated in Stage 1 to flex it so that it represents the current proportion of ordinary shares owned by the individual.

This scaling calculation takes the amount calculated at Stage 1 and subjects it to the following calculation:

Amount calculated at Stage 1 x (E/F)/(A/B)

Where E = the number of ordinary shares owned by the individual on the date that the current distribution is made

Where F = the number of ordinary shares of the company on the date that the current distribution is made

Where A = the number of ordinary shares owned by the individual at the immediately previous relevant time

Where B = the number of ordinary shares of the company at the immediately previous relevant time

Stage 3 (only relevant where Art 81V applies) – identify the “specified profits” which have arisen since the “immediately previous relevant time”

When Art 81V applies there is a requirement to identify the “specified profits” which have “arisen”, for the purposes of the Distribution Rules, between the current distribution and the “immediately previous relevant time”.

This requires the identification of the “specified profits” which have arisen in each of the financial periods, beginning with the financial period ending in the year of assessment in which a distribution was last made to the individual, up to and including the “relevant financial period”³⁸. The calculation of this amount is very similar to the calculation in Art 81T. This is best explained through the following examples.

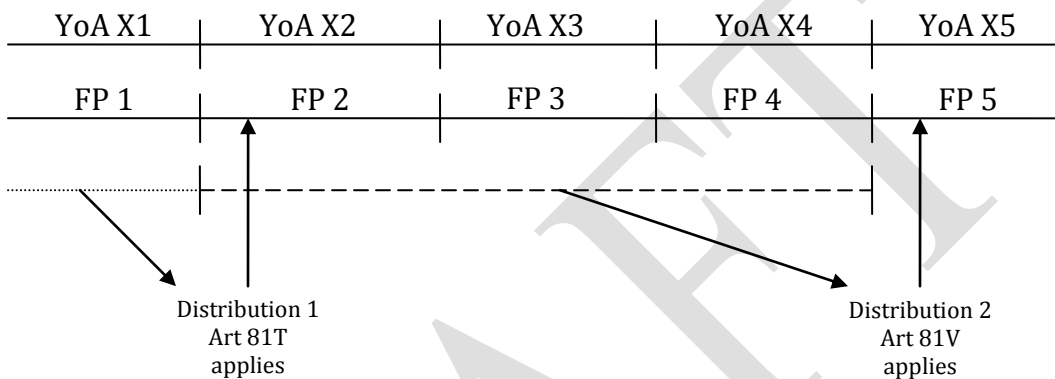
³⁷ Note: it is the proportion of share ownership which is the key factor, the proportion of shares owned by an individual can change even though the individual neither acquires nor disposes of shares (e.g. new shares are issued to a different shareholder).

³⁸ The term “relevant financial period” is explained in detail in section 5.4.2 of these guidance notes.

Example 5.23

ABC Ltd is a Jersey resident company which is taxable at 0%. ABC Ltd draws up its accounts to 31 December annually. Mr X, a Jersey resident individual, owns 100% of the ordinary share capital in ABC Ltd.

The company makes its first distribution during its second financial period and then makes its second distribution during its fifth financial period.



The “specified profits” from FP1 are included in the calculation of the individual’s allocated share of specified profits under Art 81T at the time of the first distribution.

The “specified profits” from FP2 (the financial period in which the last distribution was made), FP4 (the “relevant financial period”) and FP3 (a financial period between the financial period in which the last distribution was made and the “relevant financial period”) are included in Stage 3 of the calculation under Art 81V at the time of the second distribution.

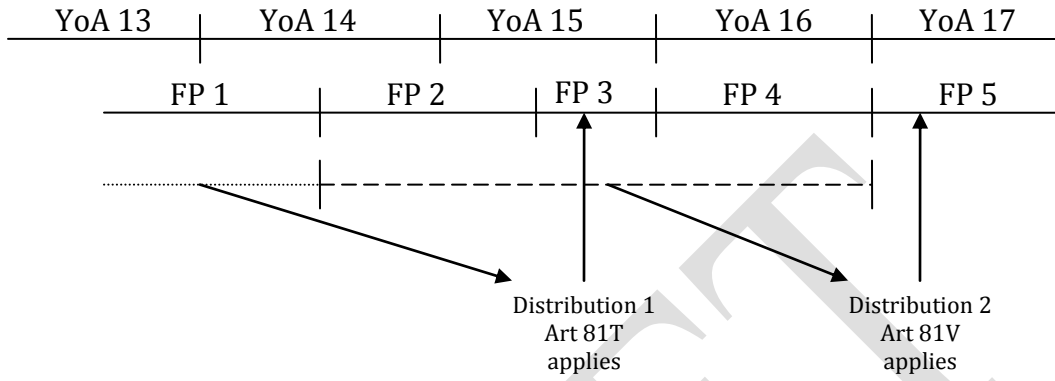
It is noted that there could be more than one financial period ending in the year of assessment in which a distribution was last made to the individual. The Distribution Rules make it clear that where this occurs you start with the first financial period ending in the year of assessment in which a distribution was last made to the individual.

Example 5.24

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 July 2013 and it draws up its first set of accounts to 30 June 2014. It draws up its second set of accounts to 30 June 2015. It

decides to draw up its third set of accounts to 31 December 2015, then to 31 December annually thereafter.

ABC Ltd makes a distribution on 1 September 2015. It makes a further distribution on 31 March 2017.



The “specified profits” from FP1 are included in the calculation of the individual’s allocated share of specified profits under Art 81T at the time of the first distribution.

The “specified profits” from FP2 (the first financial period ending in the year of assessment in which the last distribution was made), FP4 (the “relevant financial period”) and FP3 (a financial period between the first financial period ending in the year of assessment in which the last distribution was made and the “relevant financial period”) are included in Stage 3 of the calculation under Art 81V at the time of the second distribution.

The amount calculated is then subject to a scaling calculation as follows:

(Summation of specified profits from identified FPs) x A/B

Where A = the number of shares owned by the Jersey resident individual shareholder on the date that the current distribution is made

Where B = the number of ordinary shares of the company on the date that the current distribution is made

Stage 4 – summation of amount calculated at Stage 2 and Stage 3

The amount calculated at Stage 2 is then added to the amount calculated at Stage 3. For the avoidance of doubt, where Arts 81U or 81W apply, the amount calculated at Stage 3 will be nil.

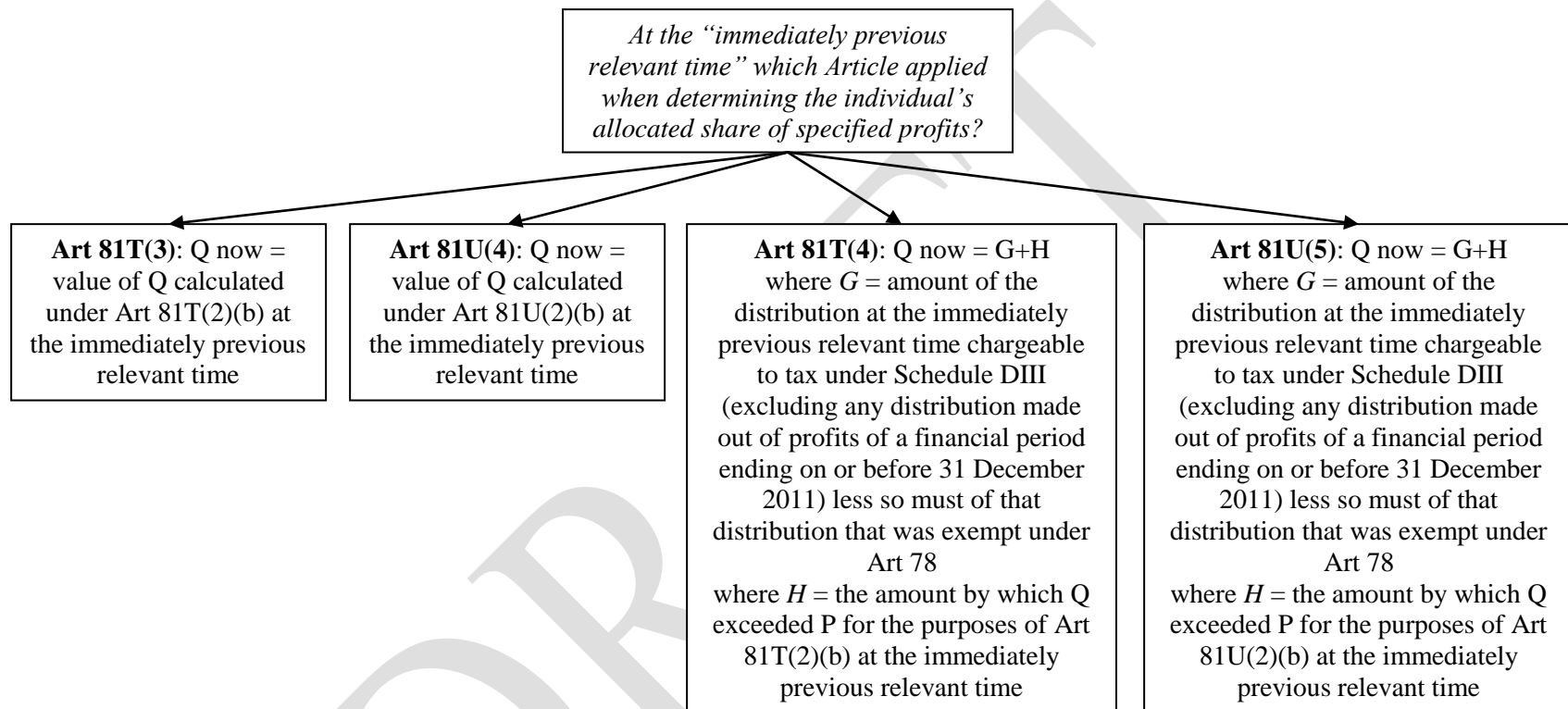
Stage 5 – P-Q formula

The calculation is then subject to the P-Q formula to ensure that the individual is not disadvantaged where they have already been taxed on earlier distributions. To ensure that the P-Q formula works in a wider range of possible circumstances, the P-Q formula is slightly more involved than in the context of Art 81T.

Under each of the Articles the value of P is the amount calculated at Stage 4. The value of Q differs depending on which Article applies to the distribution and the analysis applied at the immediately previous relevant time. The following diagrams and examples help to determine the value of Q in each of the possible circumstances:

DRAFT

Article 81U



Example 5.25

ABC Ltd is a Jersey resident company which is taxable at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, then to 31 December annually thereafter. Mr X, a Jersey resident individual, owns 100% of the ordinary share capital in ABC Ltd.

The results for ABC Ltd for the first two years are shown below:

	FP ended 31/12/13	FP ended 31/12/14
Specified profit	£10,000	£15,000

Distribution 1

ABC Ltd makes a distribution of £3,000 on 30 November 2013 out of its profits for the financial period ended 31 December 2013. This distribution is not taxable under Schedule DIX because at 30 November 2013 Mr X does not have an allocated share of specified profits. However this distribution is fully taxable on Mr X under Schedule DIII, as the distribution is not exempt under Art 78(1A).

Distribution 2

ABC Ltd makes a distribution of £4,000 on 30 June 2014 out of its profits for the financial period ended 31 December 2013. The analysis under Art 81T is as follows:

Summation of specified profits for the financial periods falling within the current period of ownership, up to and including the relevant financial period = £10,000

Scaling calculation = £10,000 x 100%

P-Q formula: P = £10,000 & Q = £3,000, therefore P-Q = £7,000

As the amount calculated in the P-Q formula (£7,000) is greater than the amount of the distribution (£4,000), Art 81T(3) applies and the individual's allocated share of specified profits is £10,000 (i.e. the amount calculated in the scaling calculation)

As the distribution (£4,000) is less than Mr X's allocated share of specified profits, the whole amount of the distribution is taxable on Mr X under Schedule DIX

Distribution 3

ABC Ltd makes a distribution of £10,000 on 30 November 2014 out of its profits for the financial period ended 31 December 2014. When applying Art 81U to distribution 3 the value of Q in the P-Q formula is £3,000. This is because at the immediately previous relevant time (i.e. 30 June 2014) Mr X's allocated share of specified profit was determined under Art 81T(3). Therefore the value of Q now is equal to the value of Q calculated under Art 81T(2)(b) at the immediately previous relevant time (i.e. £3,000).

Example 5.26

ABC Ltd is a Jersey resident company which is taxable at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, then to 31 December annually thereafter. Mr X, a Jersey resident individual, owns 100% of the ordinary share capital in ABC Ltd.

The results for ABC Ltd for the first two years are shown below:

	FP ended 31/12/13	FP ended 31/12/14
Specified profit	£10,000	£15,000

Distribution 1

ABC Ltd makes a distribution of £3,000 on 30 November 2013 out of its profits for the financial period ended 31 December 2013. This distribution is not taxable under Schedule DIX because at 30 November 2013 Mr X does not have an allocated share of specified profits. However this distribution is fully taxable on Mr X under Schedule DIII, as the distribution is not exempt under Art 78(1A).

Distribution 2

ABC Ltd makes a distribution of £9,000 on 30 June 2014, of which £7,000 is made out of its profits for the financial period ended 31 December 2013 and the remaining £2,000 is made out of its profits for the financial period ended 31 December 2014. The analysis under Art 81T is as follows:

Summation of specified profits for the financial periods falling within the current period of ownership, up to and including the relevant financial period = £10,000

Scaling calculation = £10,000 x 100%

P-Q formula: $P = £10,000$ & $Q = £3,000$, therefore $P-Q = £7,000$

As the amount calculated in the P-Q formula (£7,000) is less than the amount of the distribution (£9,000), Art 81T(4) applies and the individual's allocated share of specified profits is £7,000 (i.e. the amount calculated in the P-Q formula)

As the distribution (£9,000) is greater than Mr X's allocated share of specified profits (£7,000), £7,000 of the distribution is taxable on Mr X under Schedule DIX and the remaining £2,000 is taxable under Schedule DIII

Distribution 3

ABC Ltd makes a distribution of £10,000 on 30 November 2014 out of its profits for the financial period ended 31 December 2014.

When applying Art 81U to this distribution the value of Q in the P-Q formula is £2,000. This is because at the immediately previous relevant time (i.e. 30 June 2014) Mr X's allocated share of specified profit was determined under Art 81T(4). Therefore the value of Q now is equal to G+H:

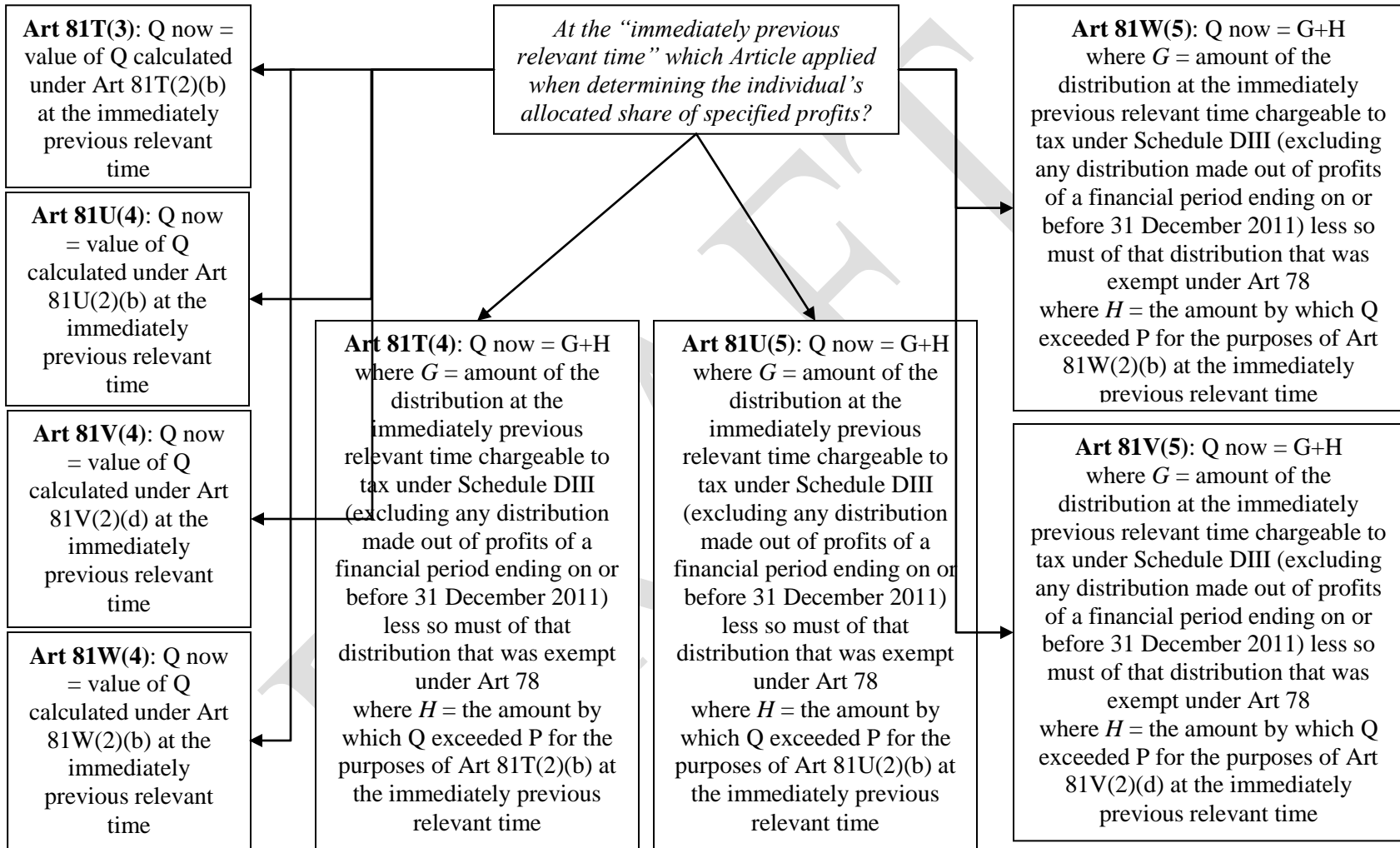
where G is the amount of the distribution at the immediately previous time chargeable to tax under Schedule DIII (excluding any distribution made out of profits of a financial period ending on or before 31 December 2011) less so much of that distribution that was exempt under Art 78 (i.e. £2,000)

where H is the amount by which Q exceeded P for the purposes of Art 81T(2)(b) at the immediately previous relevant time (i.e. nil because Q did not exceed P at the immediately previous relevant time)

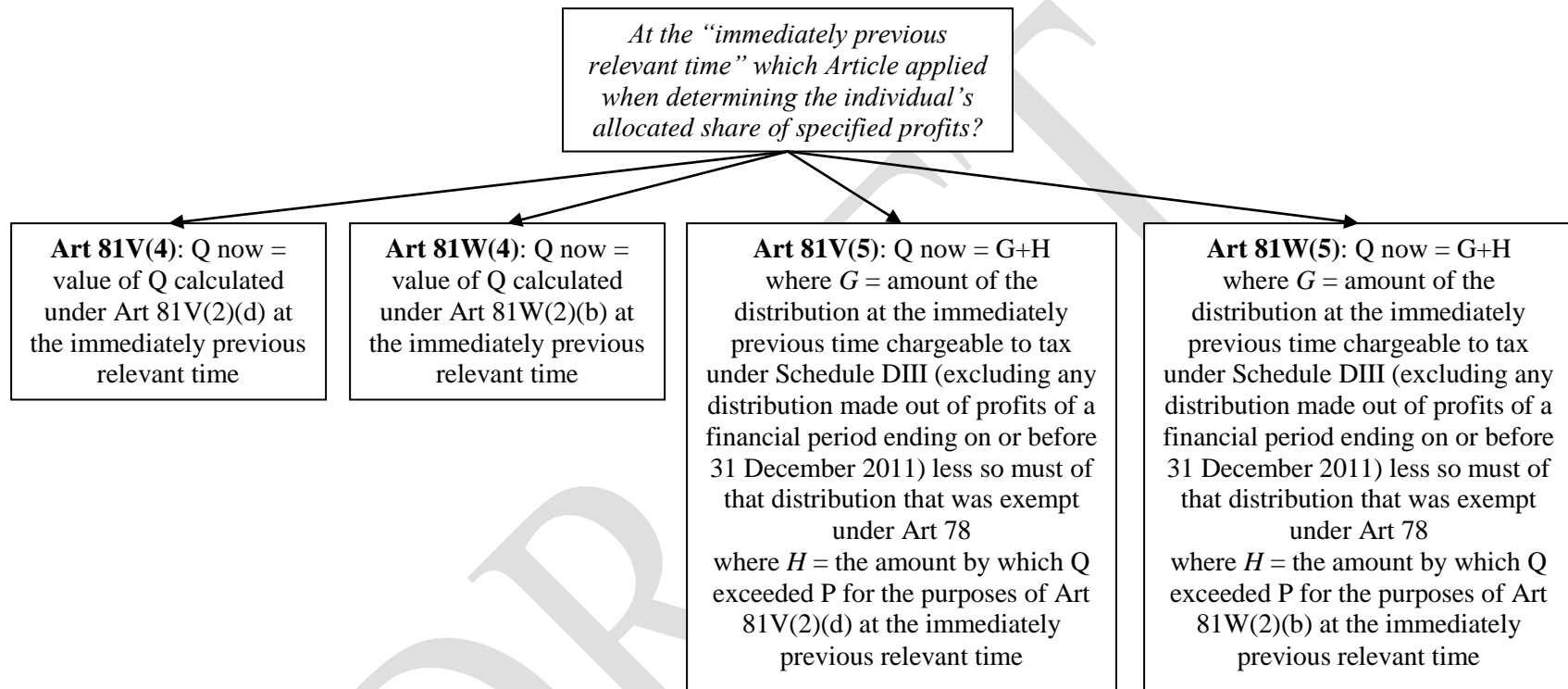
Hence the value of Q now is £2,000

This approach of looking back to information from the immediately previous relevant time is also followed when determining the value of Q in both Arts 81V and 81W, as the following diagrams highlight.

Article 81V



Article 81W



Stage 6 – determination of the particular individual’s allocated share of specified profits

Following completion of the P-Q formula it is then possible to calculate the individual’s allocated share of specified profits.

If the amount calculated by virtue of the P-Q formula is greater than, or equal to, the amount of the distribution, the individual’s allocated share of specified profits is the amount calculated at Stage 4.

If the amount calculated by virtue of the P-Q formula is less than the amount of the distribution, the individual’s allocated share of specified profits is the higher of: (a) the amount calculated by virtue of the P-Q formula; or (b) nil.

Option (b) is included because the amount calculated by virtue of the P-Q formula can be a negative figure.

Stage 7 – compare the amount of the distribution to the individual’s allocated share of specified profits

Once the individual’s allocated share of specified profits has been determined, all that is required is a comparison between the amount of the current distribution³⁹ and the individual’s allocated share of specified profits as this comparison between the two amounts will determine the tax treatment applicable to the distribution.

If the individual’s allocated share of specified profits is greater than, or equal to, the amount of the distribution, the whole of the distribution is a “relevant distribution”. As a consequence the whole amount of the distribution will be taxable under Schedule DIX⁴⁰.

If the individual’s allocated share of specified profits is less than the amount of the distribution, the amount of the distribution equal to the individual’s allocated share of specified profits will be a “relevant distribution” and hence taxable under Schedule DIX and the remainder will be taxable under Schedule DIII⁴¹.

For the avoidance of doubt, if the individual’s allocated share of specified profits is nil, the whole of the distribution will be taxable under Schedule DIII.

³⁹ Where the distribution is not made in cash, the amount of the distribution will be the market value of the distribution at the time it is made.

⁴⁰ The consequences of a distribution being taxable under Schedule DIX are outlined in section 3.1 of these guidance notes.

⁴¹ The consequences of a distribution being taxable under Schedule DIII are outlined in section 3.2 of these guidance notes

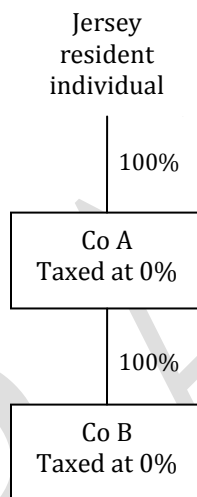
6. MULTI-TIERED STRUCTURES

6.1 WHAT IS A “MULTI-TIERED” STRUCTURE?

In a number of situations an individual owns shares in a company, which in turn owns shares in another company. For the purpose of these guidance notes this type of structure, where companies own shares in other companies, is known as a “multi-tiered structure”.

Example 6.1

The following diagram outlines a “multi-tiered structure”:



Importantly both Company A and Company B are Jersey tax resident companies.

Individuals who do not own shares in companies in a multi-tiered structure can ignore this section of the guidance notes and Art 81X of the Income Tax Law. For the avoidance of doubt, in this context the word “own” is interpreted in accordance with the broad definition of that word outlined in Art 82A. Therefore in Example 6.1 the Jersey resident individual “owns” all of the shares in Company B.

6.2 PURPOSE OF ART 81X

Without a specific provision the scope of the Distribution Rules could be avoided through the use of multi-tiered structures. The potential to avoid the scope of the Distribution Rules through multi-tiered structures is addressed in Art 81X.

In summary Art 81X means that where, in Example 6.1, Company B makes a distribution to Company A and at that time (i.e. at the time that Company B makes a distribution to Company A) the Jersey resident individual has an allocated share of specified profit in Company B, an amount of that allocated share of specified profit will be transferred from Company B to Company A, such that when Company A makes a distribution to the individual, the individual will have an allocated share of specified profit in Company A and hence all or part of that distribution will be taxable under Schedule DIX.

6.3 WHEN DOES ART 81X APPLY?

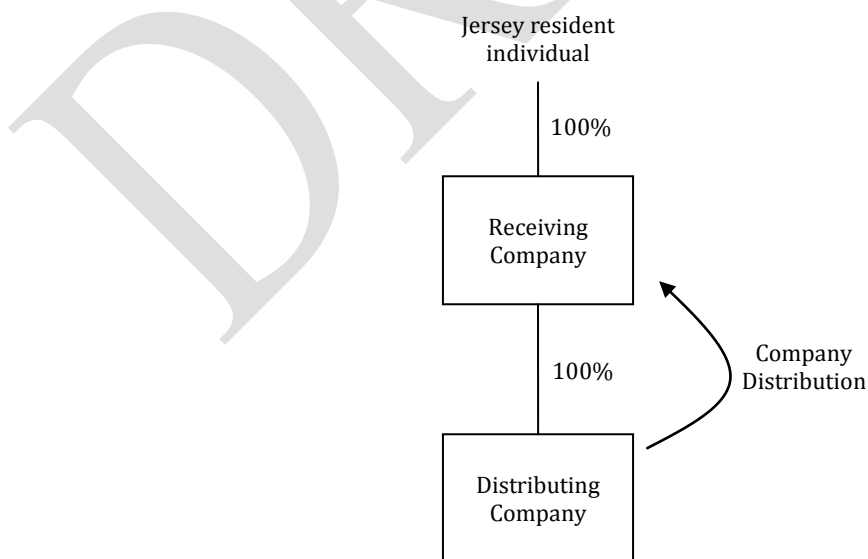
Legislative reference: Art 81X(1)

Art 81X applies when the three tests in Art 81X(1) are met, namely:

- (a) a Jersey resident company (called the “receiving company” in Art 81X) receives a distribution (called a “company distribution” in Art 81X) from another Jersey resident company (called the “distributing company” in Art 81X)
- (b) at the time of the “company distribution”, a Jersey resident individual “owns” more than 2% of the ordinary share capital in the “distributing company”; and
- (c) the individual “owns” at least one ordinary share in the “receiving company” through his or her shareholding in the “receiving company”

Each of these tests must be met before Art 81X applies.

Example 6.2



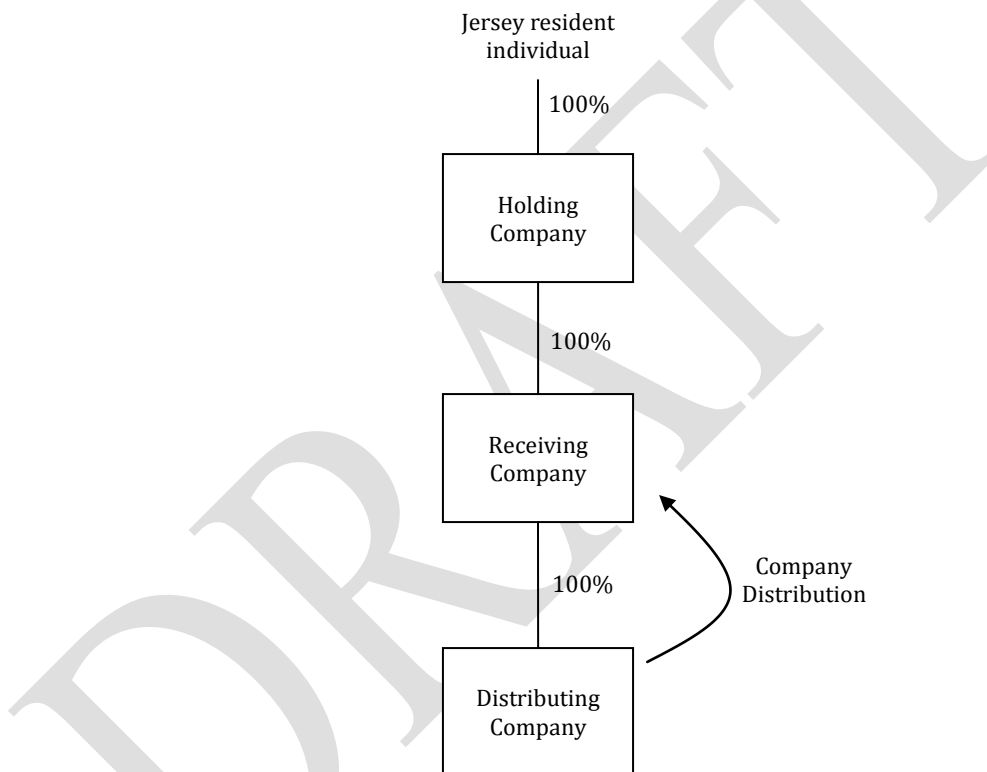
In this example, the receiving company receives a company distribution from the distributing company, the Jersey resident individual “owns”

more than 2% of the ordinary shares in the distributing company and he/she also “owns” at least 1 of the shares in the distributing company through his/her ownership of shares in the receiving company.

Hence Art 81X would apply in this situation.

The number of “tiers” in the multi-tiered structure does not change the applicable analysis.

Example 6.3

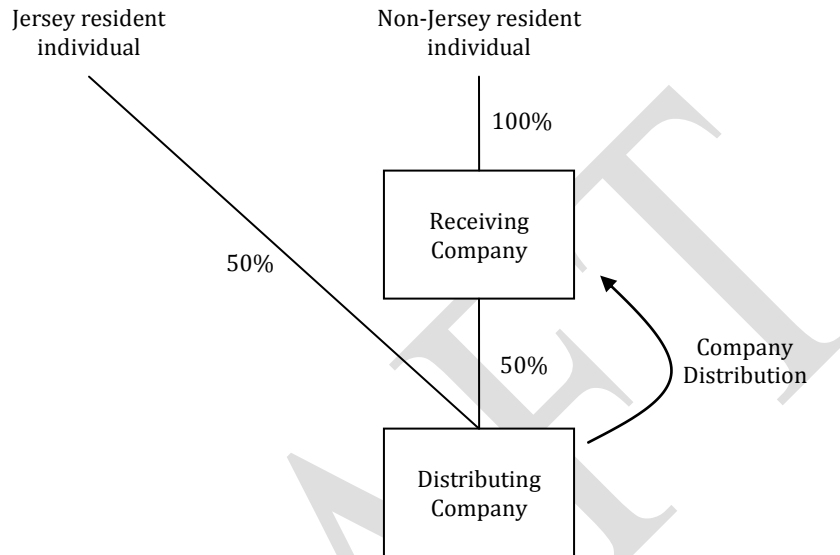


In this example, the receiving company receives a company distribution from the distributing company, the Jersey resident individual “owns” more than 2% of the ordinary shares in the distributing company and he/she also “owns” at least 1 of the shares in the distributing company through his/her ownership of shares in the receiving company.

The fact that his/her ownership of shares in the receiving company is through the holding company does not change the analysis and hence Art 81X would apply in this situation.

Assuming that the holding company is also Jersey resident, Art 81X would also apply to any company distribution made from the receiving company to the holding company.

Example 6.4

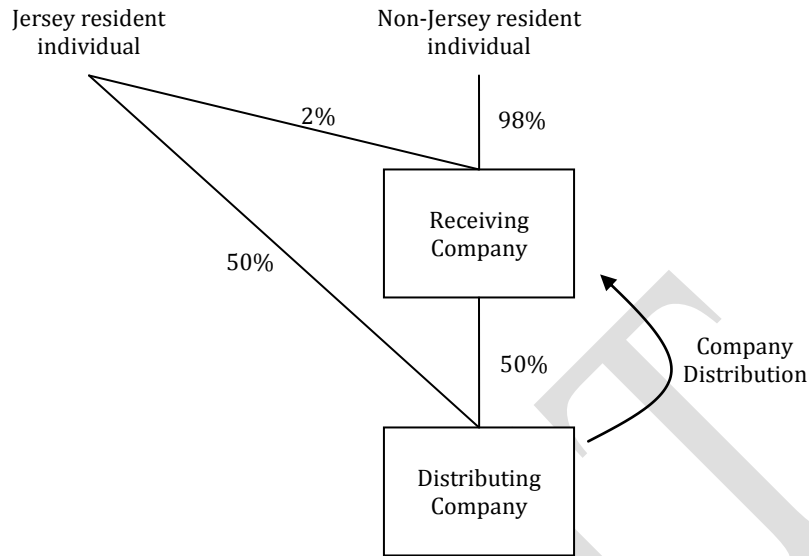


In this example, the receiving company receives a company distribution from the distributing company and the Jersey resident individual “owns” more than 2% of the ordinary shares in the distributing company, however he/she does not “own” any shares in the distributing company through his/her ownership of shares in the receiving company (i.e. because he/she does not own any shares in the receiving company).

Hence Art 81X would not apply in this situation.

Although it is noted that the following example is unlikely to occur in the real world, it has been included to illustrate the tests in Art 81X(1).

Example 6.5



In this example, the Jersey resident individual owns 1% of the shares in the distributing company through his shareholding in the receiving company (i.e. 2% x 50%) and 50% directly.

The applicable analysis is as follows: the receiving company receives a company distribution from the distributing company, the Jersey resident individual “owns” more than 2% of the ordinary shares in the distributing company (he/she owns 51% of the ordinary shares in the distributing company) and he/she also “owns” at least 1 of the shares in the distributing company through his/her ownership of shares in the receiving company.

The fact that the individual does not own 2% of the ordinary share capital in the distributing company through his/her ownership of shares in the receiving company is irrelevant and hence Art 81X applies on the company distribution.

6.4 CALCULATION OF THE INDIVIDUAL’S DEEMED PROPORTION OF THE COMPANY DISTRIBUTION

Legislative reference: Art 81X(2)(a)

If Art 81X applies, the first stage is to calculate how much of the company distribution is allocable to the particular Jersey resident individual. This is achieved by applying the following formula:

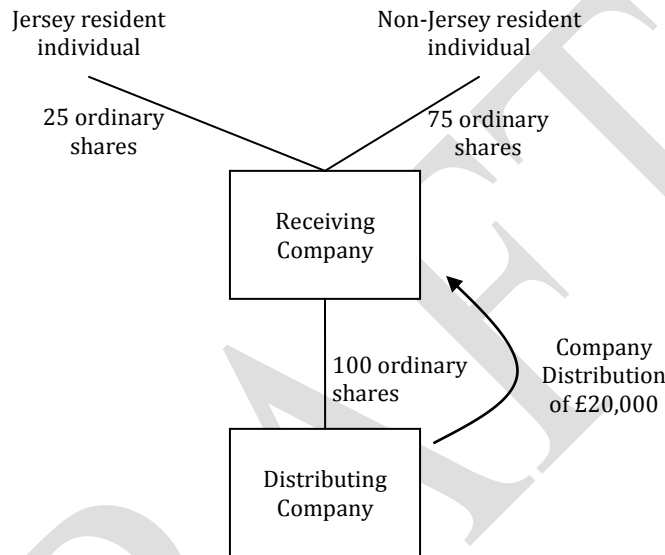
$D \times (A/B)$

Where D is the amount of the company distribution

A is the number of ordinary shares in the distributing company which are “owned” by the individual at the time of the company distribution by virtue of his/her ownership of shares in the receiving company

B is the number of ordinary shares in the distributing company which are owned by the receiving company at the time of the company distribution

Example 6.6



The Jersey resident individual's deemed proportion of the company distribution is calculated as follows:

D = £20,000 the amount of the company distribution

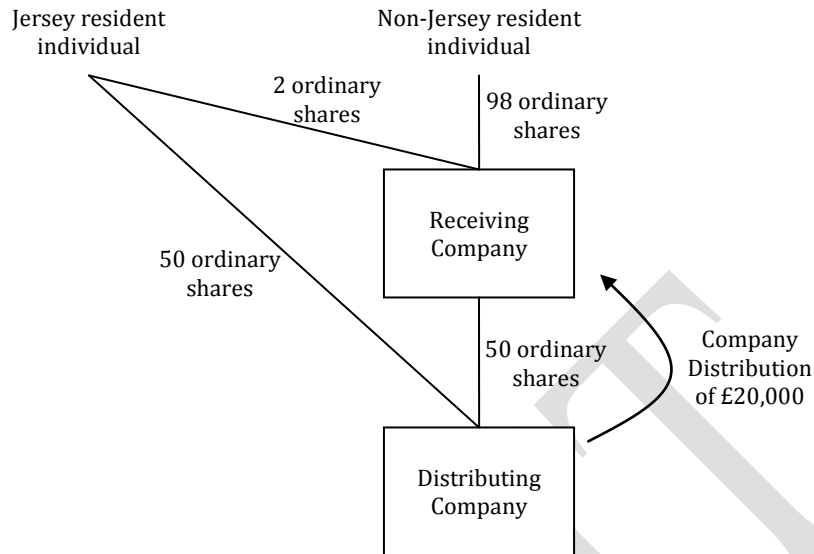
A = 25 the number of ordinary shares which he/she owns in the distributing company at the time of the company distribution by virtue of his/her ownership of shares in the receiving company (i.e. 25% x 100)

B = 100 the number of ordinary shares in the distributing company which are owned by the receiving company at the time of the company distribution

Therefore the individual's deemed proportion of the company distribution is £5,000 ($£20,000 \times 25/100$)

It is the individual's ownership of the shares in the distributing company by virtue of his/her ownership of shares in the receiving company that is key to calculating the individual's deemed proportion of the company distribution.

Example 6.7



The Jersey resident individual's deemed proportion of the company distribution is calculated as follows:

D = £20,000 the amount of the company distribution

A = 1 the number of ordinary shares which he/she owns in the distributing company at the time of the company distribution by virtue of his/her ownership of shares in the receiving company (i.e. 2% x 50)

B = 50 the number of ordinary shares in the distributing company which are owned by the receiving company at the time of the company distribution

Therefore the individual's deemed proportion of the company distribution is £400 ($£20,000 \times 1/50$)

6.5 CALCULATION OF THE INDIVIDUAL'S ALLOCATED SHARE OF SPECIFIED PROFITS IN THE DISTRIBUTING COMPANY UNDER ART 81X PRINCIPLES

The next stage is to calculate the individual's allocated share of specified profits by following the two step process outlined in Art 81X(2)(b).

6.5.1 Step 1: assumed distribution to individual

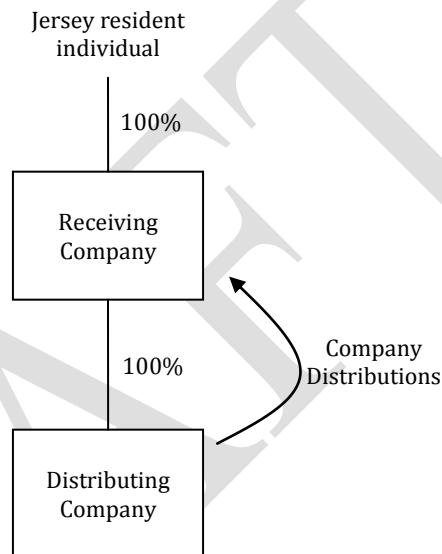
Legislative reference: Art 81X(2)(b)(i)

To calculate the individual's allocated share of specified profits at the time of the company distribution, Art 81X(2)(b) assumes that a distribution is made by the

distributing company to the individual at the time of the company distribution. This assumed distribution only exists so that there is a requirement to calculate the individual's allocated share of specified profits in the distributing company and no tax liability arises on the individual or the receiving company at the time of the company distribution as a consequence of this assumed distribution.

When calculating the individual's allocated share of specified profits it is necessary to apply the correct Article depending on the situation.

Example 6.8



The distributing company is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter. All of the ordinary shares in the distributing company are owned by the receiving company.

The receiving company is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter. The Jersey resident individual owns all of the ordinary share capital in the receiving company.

On 30 June 2014 the distributing company makes its first distribution to the receiving company. At the time of this company distribution Art 81T will be used to calculate the individual's allocated share of specified profits in the distributing company. This being the first assumed

distribution to the individual which would meet the three tests outlined in Art 81T(1)⁴².

On 30 June 2015 the distributing company makes its second distribution to the receiving company. At the time of this company distribution Art 81V will be used to calculate the individual's allocated share of specified profits in the distributing company. Art 81V applies because this is the first assumed distribution to the individual in any year of assessment after the year of assessment in which Art 81T was deemed to apply.

When calculating the individual's allocated share of specified profits under the appropriate Article the value of Q, in the P-Q formula⁴³, is deemed to be nil. The P-Q formula exists to protect individual taxpayers where they have received, and paid tax on, distributions before the profits which have been distributed have been included in the calculation of their allocated share of specified profits. As company distributions are, by definition, not taxed on individuals, the protection offered by the P-Q formula can be removed in this context.

In addition the value of Y in the calculations required under Articles 81U, 81V and 81W is determined in accordance with the provisions set out in section 6.7 below.

6.5.2 Step 2: inclusion of distributions from other companies

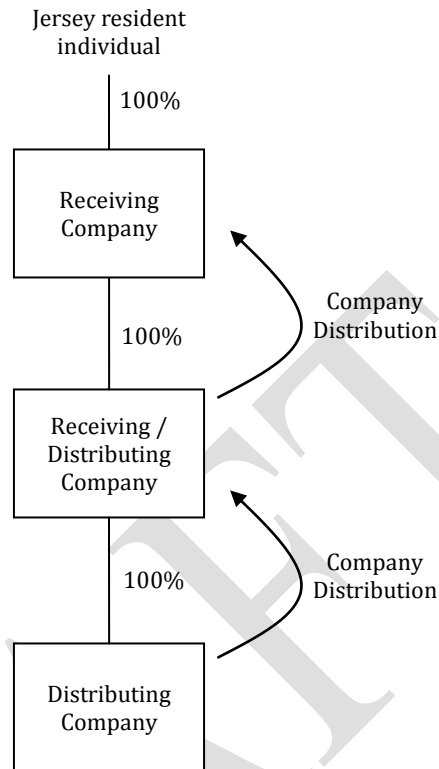
Legislative reference: Art 81X(2)(b)(ii)

It is noted that in multi-tiered structures a company can be both a distributing company and a receiving company.

⁴² See section 5.1 of these guidance notes.

⁴³ See section 5.4.6 of these guidance notes

Example 6.9



As can be seen in Example 6.9 the company in the middle tier of the structure is both a receiving company, in relation to the company distribution made by the distributing company, and a distributing company, in relation to the company distribution it makes to the receiving company.

Step 2 takes account of this by increasing the individual's allocated share of specified profits in the receiving/distributing company by the amount attributed to the individual's allocation of specified profits⁴⁴ in that company by virtue of Art 81X applying to the company distribution made by the distributing company.

Therefore in Example 6.9, assuming that the chronology of events is that the distributing company makes a company distribution to the receiving/distributing company before the receiving/distributing company makes its company distribution to the receiving company, when calculating the Jersey resident individual's allocated share of specified profits in the receiving/distribution company you need to include the amount attributed to the individual's allocated share of specified profits in the receiving/distributing company because of the company distribution which it receives.

⁴⁴ See section 6.6.1 of these guidance notes.

The rules which require the inclusion of distributions from other companies have been drafted so as to ensure that they are only included in the calculation of the individual's allocated share of specified profits in the distributing company once.

6.6 IMPACT ON THE RECEIVING COMPANY

6.6.1 Comparison between (i) deemed proportion of the company distribution and (ii) the allocated share of specified profits, to determine the amount to be attributed to the individual's allocated share of specified profits in the receiving company

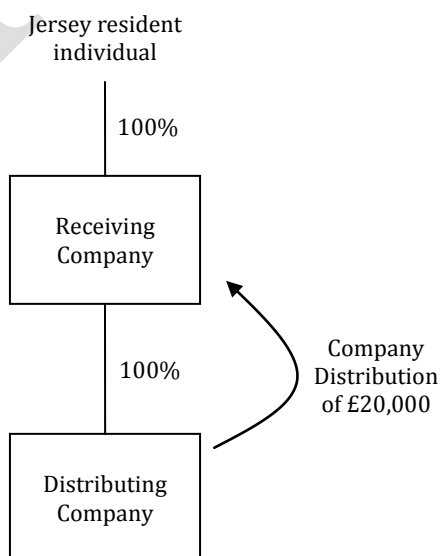
Legislative reference: Art 81X(3) & (4)

Art 81X then requires a comparison between the amounts calculated for the individual's deemed proportion of the company distribution and the individual's allocated share of specified profits under Art 81X principles.

If the individual's deemed proportion of the company distribution is equal to or less than the individual's allocated share of specified profits, the amount of the individual's deemed proportion of the company distribution is "attributed" to the individual's allocated share of specified profits in the receiving company as outlined below.

If the individual's deemed proportion of the company distribution is greater than the individual's allocated share of specified profits, the amount of the individual's allocated share of specified profits in the distributing company is "attributed" to the individual's allocated share of specified profits in the receiving company as outlined below.

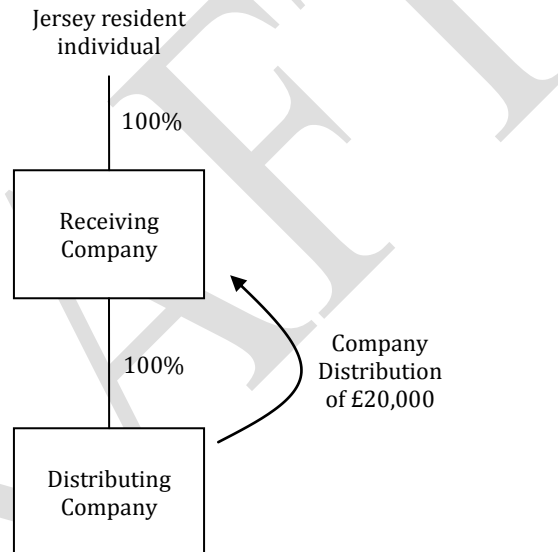
Example 6.10



At the time that the company distribution is made, the Jersey resident individual's allocated share of specified profits in the distributing company (as calculated under Art 81X principles) is £30,000.

As the individual's deemed proportion of the company distribution (£20,000 x 100% = £20,000) is less than the individual's allocated share of specified profits in the distributing company (£30,000), the amount of the individual's deemed proportion of the company distribution (£20,000) is "attributed" to the individual's allocated share of specified profits in the receiving company.

Example 6.11



At the time that the company distribution is made, the Jersey resident individual's allocated share of specified profits in the distributing company (as calculated under Art 81X principles) is £15,000.

As the individual's deemed proportion of the company distribution (£20,000 x 100% = £20,000) is greater than the individual's allocated share of specified profits in the distributing company (£15,000), the amount of the individual's allocated share of specified profits in the distributing company (£15,000) is "attributed" to the individual's allocated share of specified profits in the receiving company.

6.6.2 Including the amount attributed to the individual's allocated share of specified profits in the receiving company in Arts 81T, 81U, 81V or 81W

Legislative reference: Art 81X(5) & (6)

When the receiving company subsequently makes a distribution to the Jersey resident individual the amount attributed to the individual's allocated share of specified profits needs to be included in the calculations in Arts 81T, 81U, 81V or 81W (as applicable) such that the appropriate amount of the distribution to the individual is taxable under Schedule DIX. For the avoidance of doubt, it is the distribution to the Jersey resident individual which necessitates the inclusion of the amount attributed to the individual's allocated share of specified profits in the calculations in Arts 81T, 81U, 81V or 81W.

Where the proportion of shares owned by the Jersey resident individual in the receiving company has not changed between the time of the company distribution and the time that the distribution is made to the individual, the amount attributed to the individual's allocated share of specified profits in the receiving company is added to:

- Where Art 81T applies – the amount calculated after completion of stage 5 (i.e. the amount calculated after completion of the scaling calculation)⁴⁵.
- Where Arts 81U, 81V or 81W apply – the amount calculated after completion of stage 2 (i.e. the amount calculated after completion of the scaling calculation)⁴⁶.

Where the proportion of shares owned by the Jersey resident individual in the receiving company has changed between the time of the company distribution and the time that the distribution is made to the individual, the amount attributed to the individual's allocated share of specified profits in the receiving company is subject to a scaling calculation before being included in the calculations. The scaling calculation is as follows:

$$X \times ((E/F)/(A/B))$$

Where X = the amount attributed to the individual's allocated share of specified profits

Where E = the number of ordinary shares of the receiving company owned by the individual at the time that the distribution is made to the individual

Where F = the number of ordinary shares of the receiving company at the time that the distribution is made to the individual

Where A = the number of ordinary shares of the receiving company owned by the individual at the time of the company distribution

Where B = the number of ordinary shares of the receiving company at the time of the company distribution

The amount calculated following the application of the scaling calculation is then added to:

- Where Art 81T applies – the amount calculated after completion of stage 5 (i.e. the amount calculated after completion of the scaling calculation)⁴⁷.

⁴⁵ See section 5.4.5 of these guidance notes.

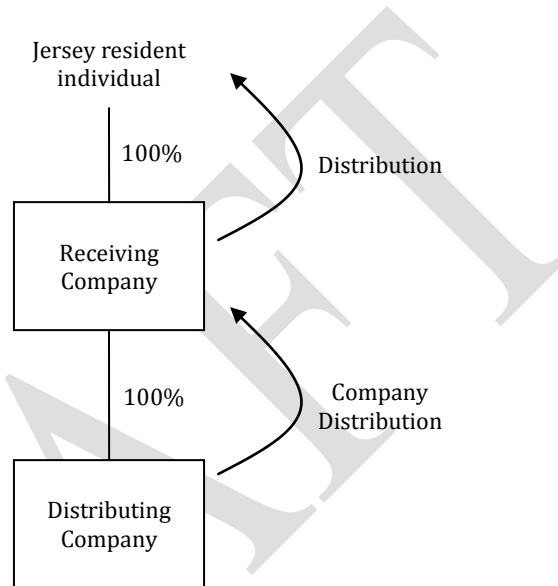
⁴⁶ See section 5.6.3 of these guidance notes.

⁴⁷ See section 5.4.5 of these guidance notes.

- Where Arts 81U, 81V or 81W apply – the amount calculated after completion of stage 2 (i.e. the amount calculated after completion of the scaling calculation)⁴⁸.

For the avoidance of doubt, the inclusion of the amount attributed to the individual's allocated share of specified profits in the calculations in Arts 81T, 81U, 81V and 81W happens when the distribution is made to the Jersey resident individual, hence the chronology of distributions is critical to determine the correct tax treatment.

Example 6.12



Both the distributing company and the receiving company draw up their accounts to 31 December annually.

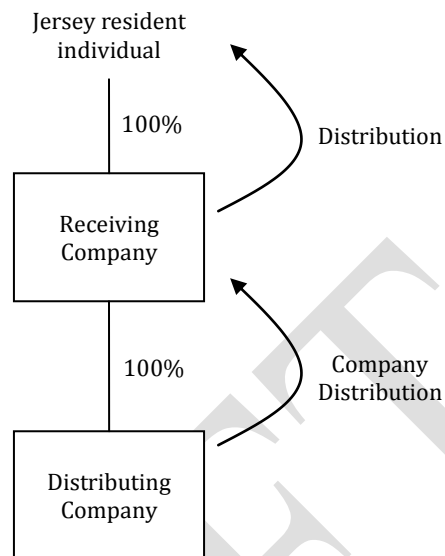
The distributing company makes a company distribution to the receiving company on 30 June 2014, and the receiving company subsequently makes a distribution to the Jersey resident individual on 15 July 2014.

The amount attributed to the individual's allocated share of specified profits in the receiving company as a consequence of the company distribution on 30 June 2014 is included in the calculation of the individual's allocated share of specified profits when the distribution is made on 15 July 2014.

The fact that the company distribution is received in the same financial period/year of assessment as the distribution is made to the individual is irrelevant; the amount attributed is still included in the calculation of the individual's allocated share of specified profits.

⁴⁸ See section 5.6.3 of these guidance notes.

Example 6.13



Both the distributing company and the receiving company draw up their accounts to 31 December annually.

The receiving company makes a distribution to the Jersey resident individual on 15 July 2014, and the distributing company subsequently makes a company distribution to the receiving company on 31 July 2014.

The amount attributed to the individual's allocated share of specified profits in the receiving company as a consequence of the company distribution on 31 July 2014 is not included in the calculation of the individual's allocated share of specified profits when the distribution is made on 15 July 2014.

The distribution has been made to the individual before the receiving company received the company distribution and hence the amount attributed is not included in the calculation of the individual's allocated share of specified profits. It is the chronology of events that is the key to determining whether the attributed amount is included in the calculations.

6.7 IMPACT ON THE DISTRIBUTING COMPANY

Legislative reference: Art 81X(2)(b)(i)(D)

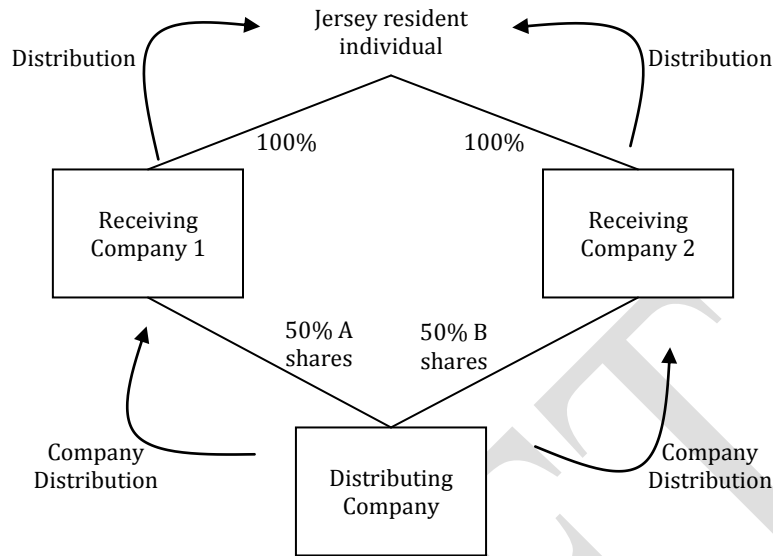
When calculating the individual's allocated share of specified profits in the distributing company at the time of the next company distribution, the amount attributed to the individual's allocated share of specified profits in the receiving company as calculated at the time of the immediately previous company distribution ("the attributed amount") can usually be subtracted from the individual's allocated share of specified profit in the distributing company as calculated at the time of the immediately previous company distribution (i.e. X in the calculations required under Arts 81U, 81V and 81W). This subtraction is specified by Art 81X(2)(b)(i)(D), replacing the value of Y in the calculations required under Arts 81U, 81V and 81W with the attributed amount.

For the avoidance of doubt, the attributed amount does not need to be included in the calculations under Arts 81T, 81U, 81V or 81W to be subtracted in this way. In other words, the receiving company is not required to pay a distribution to the Jersey resident individual in order for the attributed amount to be subtracted from the individual's allocated share of specified profits in the distributing company as calculated at the time of the immediately previous company distribution.

However the value of Y is nil where the individual, either at the time of the current company distribution or the time of the immediately previous company distribution, "owns" shares in the distributing other than by virtue of his/her ownership of shares in the receiving company. For the avoidance of doubt it is not necessary for the receiving company to be the same company at both times, just that all of the individual's ownership of shares in the distributing company is through the ownership of shares in the receiving company.

The following examples outline the points made above.

Example 6.14



Each of the distributing company, receiving company 1 and receiving company 2 are Jersey resident companies which are taxed at 0%. Each of them was incorporated on 1 January 2013 and draws up their first set of accounts to 31 December 2013, and 31 December annually thereafter.

The Jersey resident individual owns all of the ordinary shares in both receiving company 1 and receiving company 2. Receiving company 1 and receiving company 2 each own 50% of the ordinary share capital in the distributing company, although they own different classes of shares.

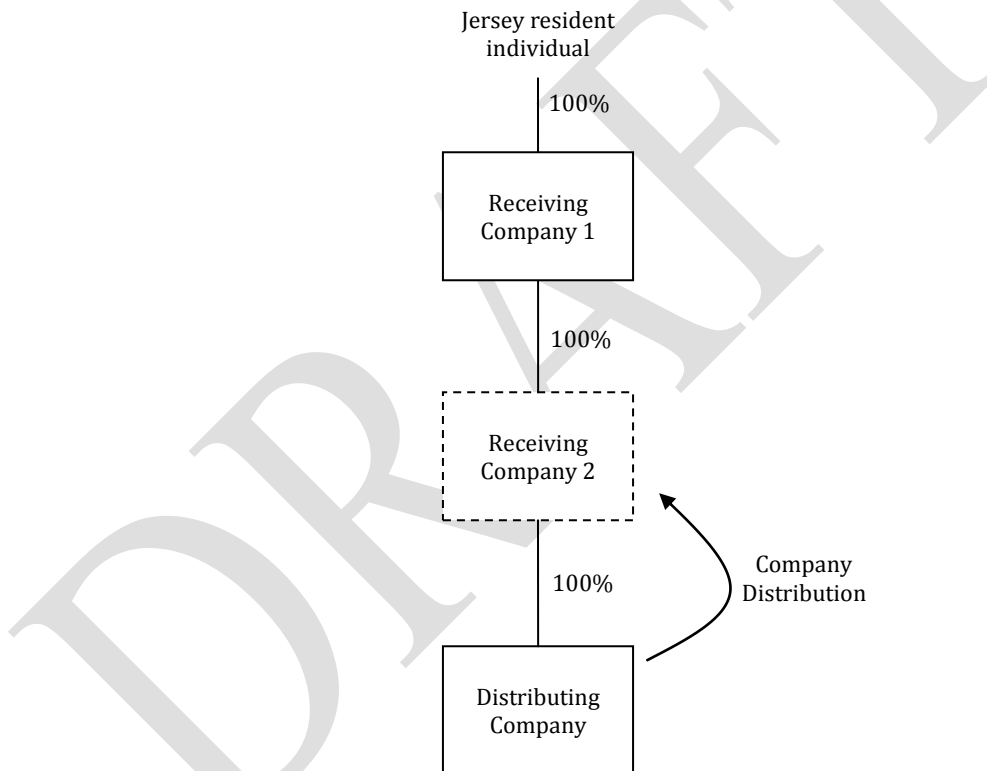
On 30 June 2014 the distributing company makes its first distribution, on the A shares, to receiving company 1. At the time of this company distribution Art 81T will be used to calculate the individual's allocated share of specified profits in the distributing company. This being the first assumed distribution to the individual which would meet the three tests outlined in Art 81T(1)⁴⁹.

On 30 June 2015 the distributing company makes its second distribution, on the B shares, to receiving company 2. At the time of this company distribution Art 81V will be used to calculate the individual's allocated share of specified profits in the distributing company. Art 81V applies because this is the first assumed distribution to the individual in any year of assessment after the year of assessment in which Art 81T was deemed to apply.

⁴⁹ See section 5.1 of these guidance notes.

In calculating the individual's allocated share of specified profits in the distributing company the value of Y in the calculation required under Art 81V is set at nil. This is because at both the immediately previous relevant time (i.e. 30 June 2014) and at the current relevant time (i.e. 30 June 2015) the individual did not "own" all of his/her shares in the distributing company by virtue of his/her ownership of shares in the receiving company. At both times the individual owned shares through the particular receiving company and the other company (e.g. at 30 June 2015 the individual owned shares through the receiving company – receiving company 2 – and the other company – receiving company 1).

Example 6.15



The distributing company is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter. All of the ordinary shares in the distributing company are owned by the receiving company.

Receiving company 1 is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter.

The Jersey resident individual owns all of the ordinary share capital in the receiving company 1.

On 30 June 2014 the distributing company makes its first distribution to receiving company 1. At the time of this company distribution Art 81T will be used to calculate the individual's allocated share of specified profits in the distributing company. This being the first assumed distribution to the individual which would meet the three tests outlined in Art 81T(1)⁵⁰.

On 1 January 2015 receiving company 2 is incorporated and inserted into the multi-tier structure between receiving company 1 and the distributing company. It is a Jersey resident company which is taxed at 0% and draws up its first set of accounts to 31 December 2015, and 31 December annually thereafter.

On 30 June 2015 the distributing company makes its second distribution, but this time to receiving company 2. At the time of this company distribution Art 81V will be used to calculate the individual's allocated share of specified profits in the distributing company. Art 81V applies because this is the first assumed distribution to the individual in any year of assessment after the year of assessment in which Art 81T was deemed to apply.

The value of Y in Art 81V(2)(b) will be the attributed amount at the time of the previous company distribution made on 30 June 2014. The value of Y is not set at nil by virtue of Art 81X(2)(b)(i)(D) because at the immediately previous relevant time (i.e. 30 June 2014) the individual "owned" all of his/her shares in the distributing company by virtue of his/her ownership of shares in the receiving company (which at that time was receiving company 1); and at the current relevant time (i.e. 30 June 2015) the individual "owned" all of his/her shares in the distributing company by virtue of his/her ownership of shares in the receiving company (which at this time is receiving company 2).

The fact that there were different receiving companies at the current relevant time and the immediately previous relevant time does not change the applicable analysis.

⁵⁰ See section 5.1 of these guidance notes.

6.7.1 Measure to prevent double counting of profits

Legislative reference: Art 81X(7)

It is acknowledged that where the value of Y is set at nil under the provisions of Art 81X(2)(b)(i)(D) it is possible that the same specified profits could result in more than one distribution to the same individual being taxable under Schedule DIX. Where an individual can prove to the satisfaction of the Comptroller that this is the case, the individual will be entitled to a credit for the tax paid on the earlier distribution when calculating the tax due on the later distribution.

DRAFT

7. SHARE TRANSFERS BETWEEN CONNECTED PERSONS

7.1 PURPOSE OF ART 81Y

As highlighted in these guidance notes, the taxation of distributions depends on whether a particular individual has an “allocated share of specified profits” at the time that the distribution is made. Without a specific provision the scope of the Distribution Rules could be avoided by transferring shares to a connected person, who does not own more than 2% of the ordinary share capital, followed by the making of a distribution to that new shareholder, shortly after the share transfer, at a time when that new shareholder does not have an allocated share of specified profits. The potential to avoid the scope of the Distribution Rules in this way is addressed in Art 81Y.

In summary, Art 81Y states that when a Jersey resident individual, who owns more than 2% of the ordinary share capital in a Jersey resident company, transfers shares in that company to another Jersey resident individual, who is a “connected person” of the first mentioned individual, a proportion of the first mentioned individual’s allocated share of specified profits will be transferred across to the second mentioned individual as a consequence of the share transfer. This means that when a distribution is paid to the second mentioned individual they may have an allocated share of specified profits, resulting in all or part of that distribution being taxable under Schedule DIX.

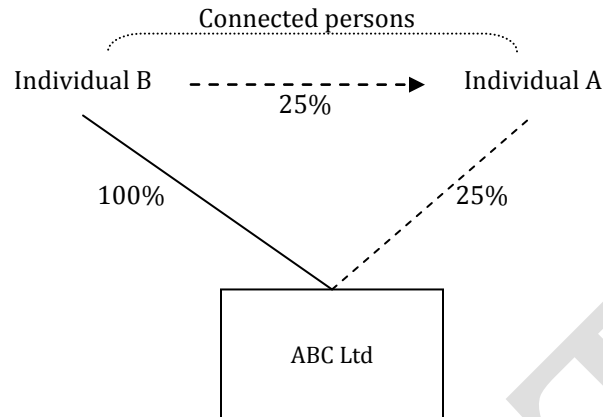
7.2 WHEN DOES ART 81Y APPLY?

7.2.1 Conditions in Art 81Y(1)

Art 81Y applies where the following conditions are met:

- (a) There is a transfer of shares (called the “transfer” in Art 81Y(1)).
- (b) At the time of the transfer a Jersey resident individual (called “individual B” in Art 81Y(1)) owns more than 2% of the ordinary share capital in a Jersey resident company.
- (c) There is another Jersey resident individual (called “individual A” in Art 81Y(1)) who is a “connected person” with individual B.
- (d) Following the transfer individual B owns fewer ordinary shares in the Jersey resident company and individual A owns more than 2% of the ordinary share capital in the Jersey resident company.

Example 7.1

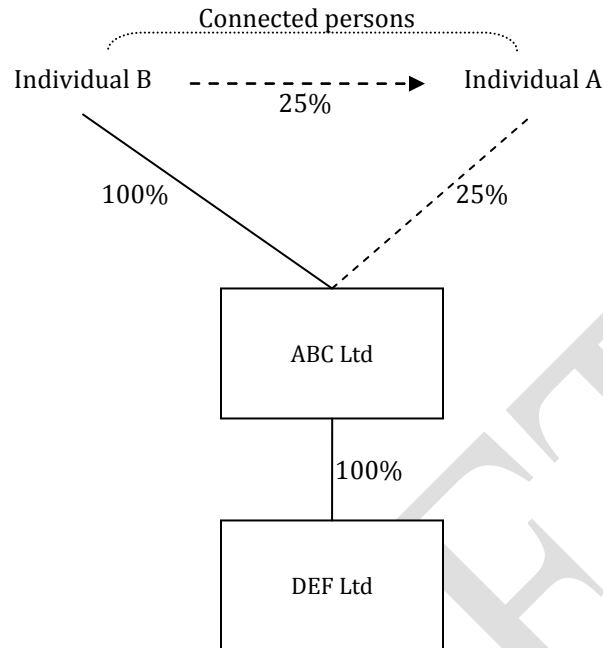


Individual B (a Jersey resident individual) owns 100% of the ordinary share capital in ABC Ltd, a Jersey resident company which is taxable at 0%. On 30 June 2014 individual B transfers 25% of the ordinary share capital in ABC Ltd to individual A (another Jersey resident individual), an individual who is “connected” with individual B. As a consequence of the transfer individual B owns 75% of the ordinary share capital in ABC Ltd and individual A owns 25% of the ordinary share capital in ABC Ltd.

In this situation Art 81Y would apply.

The use of the word “own” in Art 81Y is interpreted in accordance with the broad definition of that word outlined in Art 82A. As a consequence Art 81Y applies to indirect transfers of shares as well as direct transfers of shares.

Example 7.2



Individual B (a Jersey resident individual) owns 100% of the ordinary share capital in ABC Ltd, a Jersey resident company which is taxable at 0%, which in turn owns 100% of the ordinary share capital in DEF Ltd, a Jersey resident company which is taxable at 0%.

On 30 June 2014 individual B transfers 25% of the ordinary share capital in ABC Ltd to individual A (another Jersey resident individual), an individual who is “connected” with individual B.

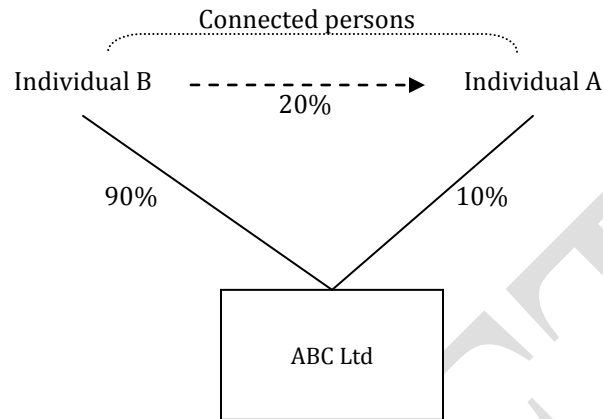
As a consequence of this transfer individual B owns 75% of the ordinary share capital in ABC Ltd and “owns” 75% of the ordinary share capital in DEF Ltd; individual A owns 25% of the ordinary share capital in ABC Ltd and “owns” 25% of the ordinary share capital in DEF Ltd.

In this situation Art 81Y would apply in relation to the transfer of shares in both ABC Ltd and DEF Ltd

For the avoidance of doubt, if individual A already owns more than 2% of the ordinary share capital of the Jersey resident company before the transfer Art 81Y does not apply, even if the transfer is from a “connected person”. An individual who already owns more than 2% of the ordinary share capital of a Jersey resident company is already within the scope of the Distribution Rules and the impact on his/her allocated share of specified profits relating to the increase in ownership of ordinary shares in the company is

addressed through the scaling calculation included in each of Arts 81T, 81U, 81V and 81W⁵¹. This is best demonstrated through an example.

Example 7.3



ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter.

Individual B (a Jersey resident individual) owns 90% of the ordinary share capital in ABC Ltd, the remaining 10% of the ordinary share capital in ABC Ltd is owned by individual A (another Jersey resident individual). Individual A is “connected” with individual B.

ABC Ltd’s specified profits for the financial period ended 31 December 2013 are £50,000.

On 30 June 2014 individual B transfers 20% of the ordinary share capital in ABC Ltd to individual A. As a consequence of the transfer individual B owns 70% of the ordinary share capital in ABC Ltd and individual A owns 30% of the ordinary share capital in ABC Ltd.

If a distribution had been made to the shareholders on 29 June 2014 (i.e. the day before the transfer), individual A’s “allocated share of specified profits” would have been £45,000 (£50,000 x 90%) and individual B’s “allocated share of specified profits” would have been £5,000 (£50,000 x 10%).

If a distribution were to be made on 1 July 2014 (i.e. the day after the transfer) individual A’s “allocated share of specified profits” would be

⁵¹ See sections 5.4.5 and 5.6.3 of these guidance notes.

£35,000 ($£50,000 \times 70\%$) and individual B's "allocated share of specified profits" would be £15,000 ($£50,000 \times 30\%$).

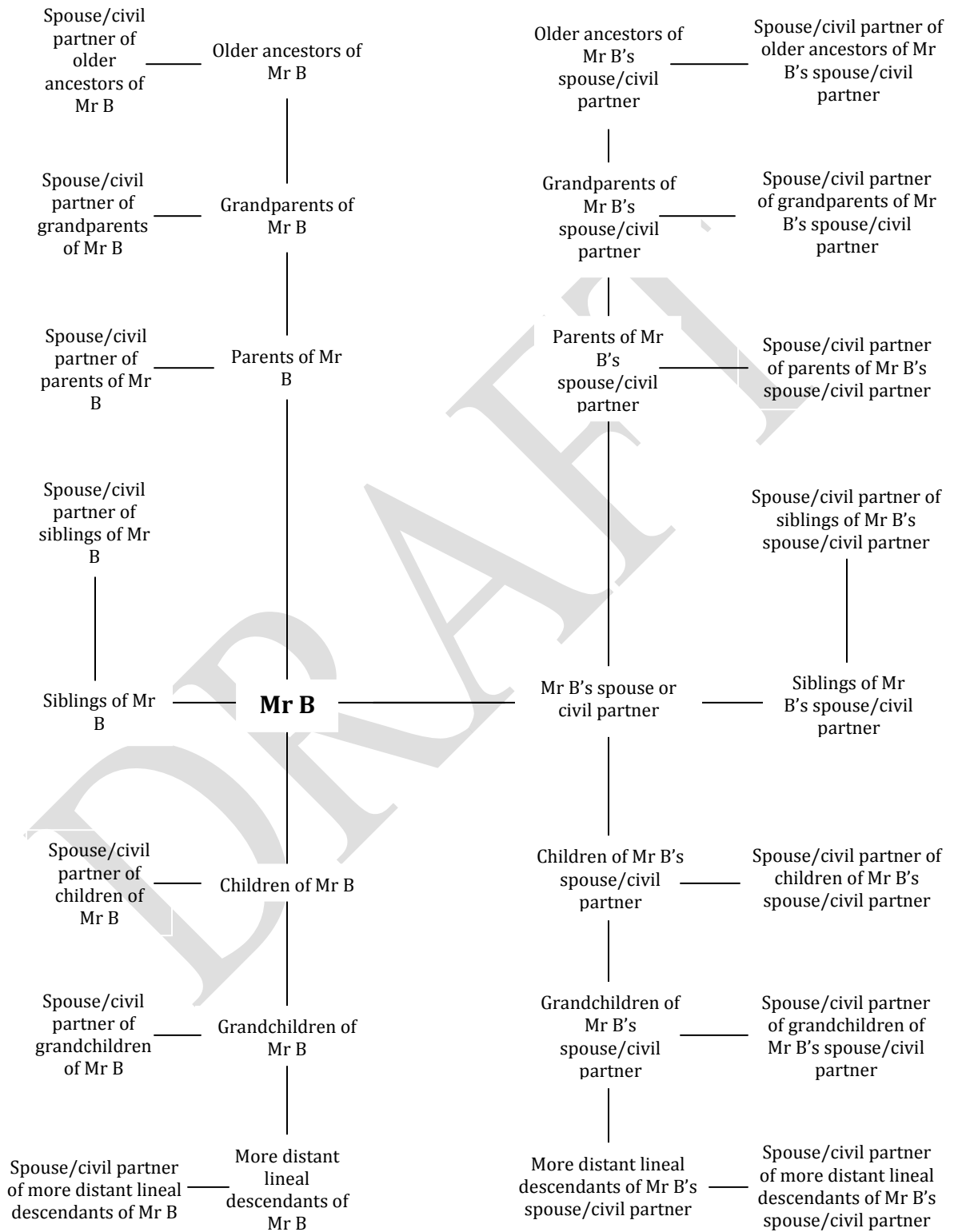
Hence the transfer of shares between individual B and individual A has been addressed through the scaling calculation, rather than through Art 81Y.

7.2.2 Definition of "connected person"

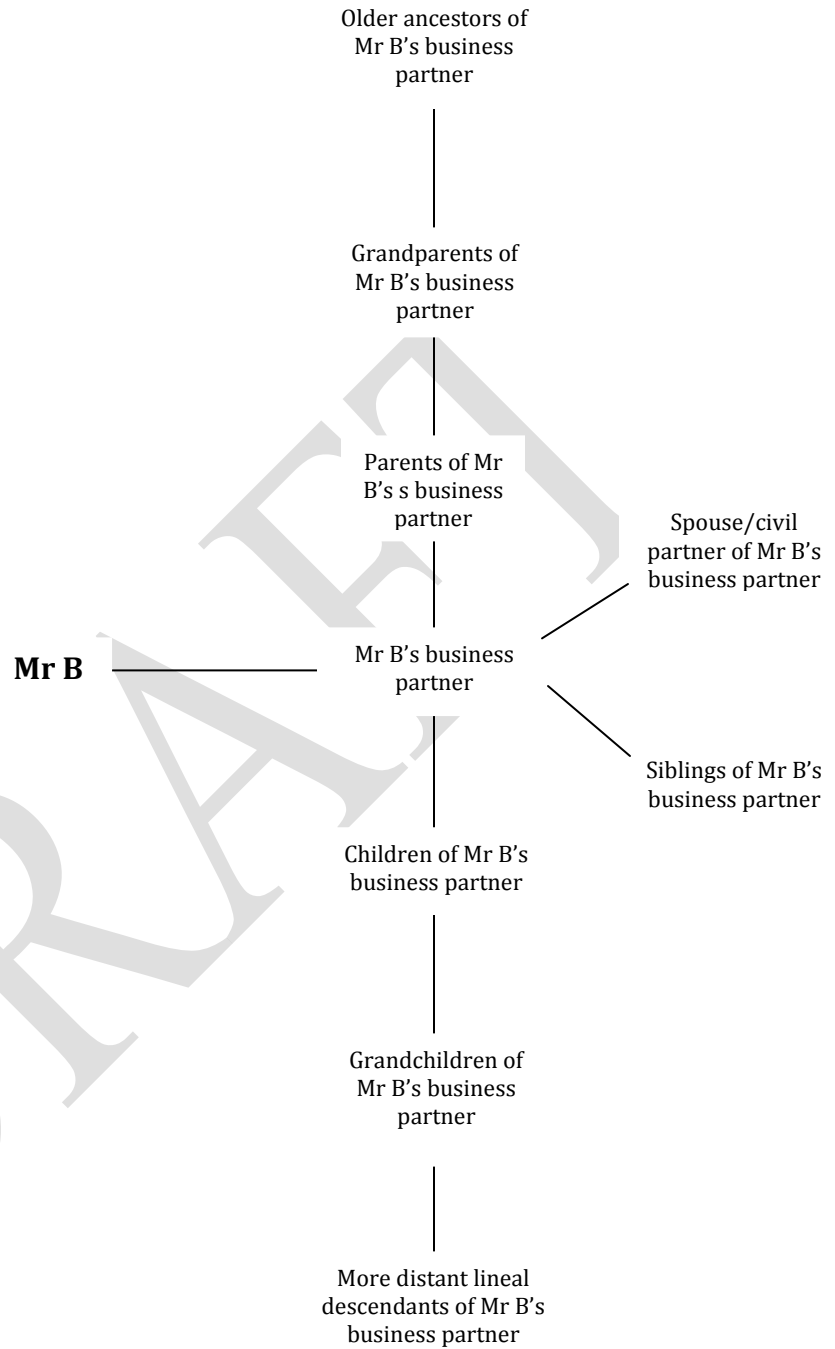
The term "connected person" is defined in Art 3A. The diagrams on the next two pages of the guidance notes indicate the other individuals with whom a particular individual (Mr B) is "connected":

DRAFT

Art 3A(2) – family members



Art 3A(3) – business partners and their families



7.3 CALCULATION OF THE AMOUNT OF THE ALLOCATED SHARE OF SPECIFIED PROFITS TRANSFERRED?

Art 81Y(2) outlines the steps required to calculate the amount of the allocated share of specified profits which is effectively transferred from individual B to individual A when Art 81Y applies.

7.3.1 Step1 – calculate individual B’s allocated share of specified profits at the time of the transfer

To calculate individual B’s allocated share of specified profits at the time of the transfer, Art 81Y(2) assumes that a distribution is made by the company at the time of the transfer. This assumed distribution only exists so that there is a requirement to calculate individual B’s allocated share of specified profits in the company and no tax liability arises on individual B (or any intermediate holding company) at the time of the transfer as a consequence of this assumed distribution.

When calculating individual B’s allocated share of specified profits it is necessary to apply the correct Article depending on the situation.

Example 7.4

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to 31 December 2013, and 31 December annually thereafter. Individual B (a Jersey resident individual) owns 100% of the ordinary share capital in ABC Ltd.

On 30 June 2014 individual B transfers 25% of the ordinary share capital in ABC Ltd to individual A (another Jersey resident individual) who is “connected” with individual B. ABC Ltd had made no distributions before 30 June 2014.

In this situation Art 81T would be used to calculate individual B’s allocated share of specified profits in ABC Ltd at the time of the transfer because the assumed distribution would meet the three tests in Art 81T(1)⁵².

Example 7.5

ABC Ltd is a Jersey resident company which is taxed at 0%. It is incorporated on 1 January 2013 and it draws up its first set of accounts to

⁵² See section 5.1 of these guidance notes.

31 December 2013, and 31 December annually thereafter. Individual B (a Jersey resident individual) owns 100% of the ordinary share capital in ABC Ltd.

On 1 September 2014 ABC Ltd makes a distribution to individual B.

On 30 June 2015 individual B transfers 25% of the ordinary share capital in ABC Ltd to individual A (another Jersey resident individual) who is “connected” with individual B. ABC Ltd had made no other distributions before 30 June 2015, other than the distribution on 1 September 2014.

In this situation Art 81V would be used to calculate individual B’s allocated share of specified profits in ABC Ltd at the time of the transfer because Art 81T would have applied to the distribution made on 1 September 2014.

Where individual B owns the ordinary shares in the company directly, the value of the assumed distribution is deemed to be nil and the value of Q, in the P-Q formula⁵³, is also deemed to be nil. By setting the value of Q at nil, previous distributions to individual B will not reduce the allocated share of specified profits calculated.

Where the company is in a multi-tiered structure (e.g. company DEF Ltd in Example 7.2), Art 81Y assumes that there is a “company distribution” and hence a requirement to calculate individual B’s allocated share of specified profits under Art 81X⁵⁴.

7.3.2 Step 2 – calculate proportion of allocated share of specified profits transferred

The amount calculated in Step 1 is then subjected to the following formula to determine the proportion of the allocated share of specified profits that is transferred from individual B to individual A:

$$Z \times (E/F)$$

Where Z is the amount calculated in Step 1 above (i.e. individual B’s allocated share of specified profits in the company)

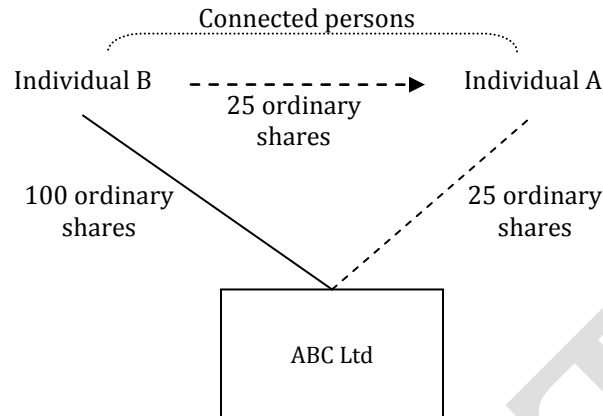
E is the number of ordinary shares owned by individual B at the time of the transfer that are transferred to individual A

F is the number of ordinary shares owned by individual B at the time of the transfer

⁵³ See section 5.4.6 of these guidance notes.

⁵⁴ See section 6 of these guidance notes.

Example 7.6



Individual B (a Jersey resident individual) owns all 100 of the ordinary shares in ABC Ltd. On 30 June 2014 individual B transfers 25 of the ordinary shares in ABC Ltd to individual A (another Jersey resident individual), an individual who is “connected” with individual B. As a consequence of the transfer individual B owns 75 of the ordinary shares in ABC Ltd and individual A owns 25 of the ordinary shares in ABC Ltd.

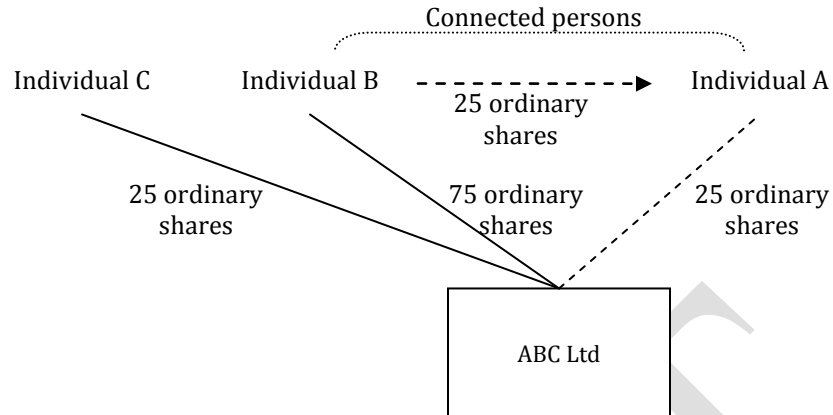
At the time of the transfer individual B’s allocated share of specified profits in ABC Ltd is £25,000.

The proportion of individual B’s allocated share of specified profits calculated under Step 2 is as follows:

$£25,000 \times 25$ (ordinary shares in ABC Ltd which were owned by individual B and were transferred to individual A) / 100 (ordinary shares in ABC Ltd which were owned by individual B) = £6,250.

In Step 2 it is the shares owned by individual B which is important, not the number of ordinary shares in the company.

Example 7.7



Individual B (a Jersey resident individual) owns 75 of the ordinary shares in ABC Ltd and individual C owns the remaining 25 ordinary shares. On 30 June 2014 individual B transfers 25 of the ordinary shares which he/she owns in ABC Ltd to individual A (another Jersey resident individual), an individual who is “connected” with individual B. As a consequence of the transfer individual B owns 50 of the ordinary shares in ABC Ltd and individual A owns 25 of the ordinary shares in ABC Ltd. Individual C continues to own the remaining 25 ordinary shares in ABC Ltd,

At the time of the transfer individual B’s “allocated share of specified profits” in ABC Ltd is £25,000.

The proportion of individual B’s allocated share of specified profits calculated under Step 2 is as follows:

$$\text{£}25,000 \times \frac{25 \text{ (ordinary shares in ABC Ltd which were owned by individual B and were transferred to individual A)}}{75 \text{ (ordinary shares in ABC Ltd which were owned by individual B)}} = \text{£}8,333$$

7.4 FUTURE DISTRIBUTIONS TO INDIVIDUAL A

Following the completion of Step 2 the proportion of individual B’s allocated share of specified profits that will be transferred to individual A has been calculated. This amount is relevant the next time a distribution is made to individual A because it will be included in individual A’s allocated share of specified profit and hence may result in some or all of that distribution being taxable under Schedule DIX. The mechanism through which this amount is included in individual A’s allocated share of specified profits is outlined below.

The transfer is assumed to be a distribution to individual A to which Art 81T applies. This assumed distribution only exists so that the next time a distribution is made to individual A, the calculation of individual A's allocated share of specified profits will be completed under Art 81U or Art 81V as applicable, rather than Art 81T, and correspondingly there is need to include a value for X and Y⁵⁵. For the avoidance of doubt, no tax liability arises on individual A (or any intermediate holding company) at the time of the transfer as a consequence of this assumed distribution.

When completing the calculation required under Art 81U or Art 81V as applicable the value for X is the amount calculated under Step 2 above and the value for Y is assumed to be nil.

Example 7.8

Same facts as for Example 7.6.

In the financial period ended 31 December 2014 the company reports specified profits of £35,000. Then on 1 September 2015 the company makes a distribution to the shareholders.

Individual A's allocated share of specified profits will be calculated under Art 81V. Art 81V applies because this is the first distribution in any year of assessment after the year of assessment in which Art 81T was deemed to apply, Art 81T applying to the assumed distribution occurring on the transfer.

Individual A's "allocated share of specified profits" under Art 81V is calculated as follows:

Stage 1 – identify the amount of individual A's allocated share of specified profits remaining from the immediately previous relevant time (i.e. the date of the transfer):

X (£6,250: as specified by Art 81Y) – Y (nil: as specified by Art 81Y) =
£6,250

Stage 2 – application of the scaling calculation:

No scaling required as the proportion of ordinary shares owned by individual A has not changed since the immediately previous relevant time (i.e. the date of the transfer); hence the amount calculated at Stage 1 is multiplied by 1 resulting in £6,250.

Stage 3 – identify the specified profits which have arisen since the immediately previous relevant time:

⁵⁵ See section 5.6.3 of these guidance notes.

£35,000 (specified profits for the financial period ended 31 December 2014) x (25 (number of ordinary shares in ABC Ltd owned by individual A on 1 September 2015) / 100 (number of ordinary shares in ABC Ltd on 1 September 2015)) = £8,750.

Stage 4 – P-Q formula:

As individual A has not been taxed previously on a distribution from ABC Ltd, the value of Q in the P-Q formula will be nil and hence individual A's allocated share of specified profits will be equal to the amount calculated at Stage 2 plus the amount calculated at Stage 3.

Stage 5 – determination of individual A's allocated share of specified profits

£6,250 (amount calculated at Stage 2) + £8,750 (amount calculated at Stage 3) = £15,000

7.5 FUTURE DISTRIBUTIONS TO INDIVIDUAL B

The amount calculated in Art 81Y is completely irrelevant for individual B as the impact on his/her allocated share of specified profits relating to the reduction in ownership of ordinary shares in the company is addressed through the scaling calculation included in each of Arts 81T, 81U, 81V and 81W. This is best demonstrated through a continuation of the example above.

Example 7.9

Same facts as for Example 7.8.

Individual B's allocated share of specified profits at the time of the distribution made on 1 September 2015 will be calculated under Art 81T, because this distribution meets the three tests in Art 81T(1).

Individual B's allocated share of specified profits will be calculated as follows:

Summation of specified profits falling within individual B's current period of share ownership up to and including the relevant financial period = £60,000 (i.e. £25,000 from financial period ended 31 December 2013 + £35,000 from financial period ended 31 December 2014)

Application of scaling calculation: £60,000 x 75% = £48,750

As individual B has not been taxed previously on a distribution from ABC Ltd, the value of Q in the P-Q formula will be nil and hence individual B's

allocated share of specified profits will be equal to the amount calculated above of £48,750.

Hence individual B's allocated share of specified profits has been reduced by reference to the number of shares in the company which he/she no longer owns as a consequence of the transfer.

As highlighted in Example 7.9, the assumed distribution to individual B contained in Art 81Y is irrelevant for individual B, it is not an actual distribution and hence is not taxable nor does it impact on which Article applies to future distributions made to individual B. The assumed distribution is only included in Art 81Y so that there is a requirement to calculate individual B's allocated share of specified profits for the purposes of determining how much of that allocated share of specified profits is transferred to individual A.

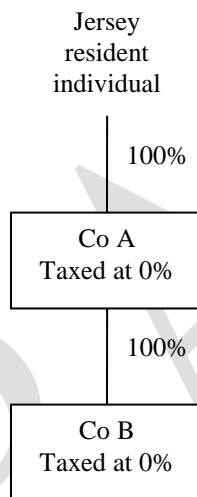
DRAFT

8. OBLIGATIONS ON JERSEY COMPANIES

8.1 IDENTIFYING JERSEY RESIDENT INDIVIDUAL SHAREHOLDERS

Jersey resident companies will be required to identify whether a Jersey resident individual is the “owner” of any of the ordinary shares of the company. When identifying such individuals the company needs to apply the broad definition of “ownership” outlined in Art 82A (i.e. look through any intermediate bodies to the ultimate individuals who have the beneficial ownership of the shares).

Therefore in the structure below the individual “owns” shares in Co B. As the individual is Jersey resident, Co B will have to calculate its specified profits, even though none of the shares in Co B is *directly* owned by a Jersey resident individual⁵⁶.



The information collected for AML purposes should help the company to complete this exercise.

8.2 CALCULATION OF “SPECIFIED PROFITS”

It is recommended that companies, in which Jersey resident individuals do own more than 2% of the ordinary share capital, complete the calculation of “specified profits” on an annual basis and at the earlier possible opportunity. Although this figure may not be required immediately, it will put the company in the best possible position to provide the necessary information as and when a distribution is made.

⁵⁶ See section 6 of these guidance notes.

8.3 COMPANIES WITH NO JERSEY RESIDENT SHAREHOLDERS

A Jersey resident company which has no Jersey resident individual shareholders may decide that it is not worthwhile exercise to calculate its “specified profits”, as this information will not be relevant. This is a choice for the company to make depending on its circumstances. In making this decision one of the factors which the company should consider is the likelihood of a Jersey resident individual becoming an owner of ordinary shares at some point in the future and the potential availability of tax attributes such as tax losses and capital allowances.

8.4 MAINTAIN ACCURATE RECORDS

It is very important that companies record the nature of profits/reserves/funds out of which distributions are made such that the recipient is able to treat the distribution correctly for tax purposes, in particular where the recipient of the distribution is taxed under Schedule DIII.

These records will be based on the accounting profits of the company rather than the taxable profits of the company *per se* and hence should be capable of reconciliation to the company’s annual accounts. In cases of uncertainty the Comptroller is happy to discuss particular transactions and agree how they should be shown in the records maintained by the company.

The type of profits/reserves/funds out of which a distribution could be made includes:

- income type profits which have been subject to tax in the company at 0%
- income type profits which have been subject to tax in the company at 10%
- income type profits which have been subject to tax in the company at 20%⁵⁷
- capital profits less any capital losses
- share capital which was issued in return for new consideration
- repayment of loan principal

Furthermore, where a company made deemed distributions under the deemed distribution regime and those profits remain in the company, the company should record these profits separately such that the shareholder who paid tax on the deemed distribution is able to claim his/her tax credit when those profits are subsequently distributed.

As highlighted in sections 10.4 and 10.5 of these guidance notes, the Comptroller is willing to maintain the treatment that where the company would be entitled to a tax credit on certain income under the terms of a double tax treaty, that credit will be carried through when the profits are distributed and available for offset against the recipient’s tax liability where the individual is taxable under DIII⁵⁸. In this situation the company would

⁵⁷ 20% income type profits could be present where income is subject to tax under Schedule A, in utility companies or in companies which have reserves which were taxed at 20% before the introduction of the “zero/ten” corporate tax regime.

⁵⁸ With no right to repayment of the tax credit.

be expected to maintain a record of the profits which carry a tax credit under the terms of a double tax treaty.

For the avoidance of doubt, the Comptroller will assume that all distributions are made out of income type profits which have been subject to tax in the company at 0% unless appropriate records to displace this assumption are maintained.

An example of the type of records that a company is expected to maintain is contained in Appendix C.

8.5 ORDERING OF DISTRIBUTIONS

The tax treatment applying to distributions taxable under Schedule DIX and Schedule DIII means that companies should give careful consideration to the order in which distributions are made so as to minimise the tax liability of shareholders.

As a “rule of thumb”, at a time when a Jersey resident shareholder has an allocated share of specified profits, companies should distribute income type profits which have been subject to tax at 0% or 10% (and which have not been the subject of a deemed distribution) in preference to all other types of profits, to avoid wasting tax credits . However the most appropriate order will depend on the particular facts relating to a company and its shareholders and hence companies should consider taking appropriate advice before making a distribution.

Where a distribution is taxable under Schedule DIII an exemption from taxation has been introduced where the profits which are being distributed and taxed under Schedule DIII at the current time have been used to determine that an earlier distribution to that individual is taxable under Schedule DIX. This is best explained through a series of examples.

Example 8.1

Investment Ltd is a Jersey resident company which undertakes investment holding activities and is taxable at 0%. Investment Ltd is incorporated on 1 January 2013. Mr X, a Jersey resident individual, is the 100% shareholder. On 1 January 2013 he funds Investment Ltd with £100,000 of share capital and £100,000 of interest free loan. During the financial period ended 31 December 2013 the company makes “specified profits” of £10,000.

Distribution 1

On 31 March 2014 Investment Ltd repays £50,000 of the interest free loan. The repayment of the loan is a distribution and hence there is a requirement to calculate Mr X’s allocated share of specified profits. At the time of the loan repayment Mr X’s allocated share of specified profits is £10,000. Hence £10,000 of the loan repayment will be taxable on Mr X

under Schedule DIX; the remaining £40,000 will be *prima facie* taxable under Schedule DIII but will then be exempt from tax under Art 78(1A)(c).

Distribution 2

On 30 September 2014 Investment Ltd distributes its profits of £10,000 for the year ended 31 December 2013. At the time of this distribution Mr X does not have an allocated share of specified profits, this is because under Art 81U the value of X is £10,000 and the value of Y is £10,000, therefore the value of X-Y is nil.

However the distribution is *prima facie* taxable under Schedule DIII because the distribution has been made out of income type profits which have been subject to tax at 0%. For the avoidance of doubt, without the existence of the exemption in Art 78(1A)(d), the whole of the amount distributed (i.e. £10,000) would be subject to tax.

As the amount being distributed on 30 September 2014 is made out of profits (i.e. the £10,000 for the year ended 31 December 2013) that have been used to determine that an earlier distribution to Mr X (i.e. the distribution on 31 March 2014) is taxable under Schedule DIX, the distribution of those profits on 30 September 2014 will be exempt from tax. Hence the £10,000 distribution on 30 September 2014 will be exempt from taxation.

Example 8.2

ABC Ltd is a Jersey resident company which is taxable at 0%. ABC Ltd is incorporated on 1 January 2013. Mr X, a Jersey resident individual, is the 100% shareholder in ABC Ltd. During the financial period ended 31 December 2013 the company reports specified profits of £11,000 and a capital gain of £5,000.

Distribution 1

On 31 March 2014 ABC Ltd pays a dividend of £5,000, specifying that the dividend has been paid out of the £5,000 capital gain which the company generated during the financial period ended 31 December 2013. At the time of this distribution Mr X's allocated share of specified profits is £11,000. Hence the £5,000 dividend will be fully taxable on Mr X under Schedule DIX.

Distribution 2

On 30 September 2014 ABC Ltd pays a dividend of £8,000, specifying that the dividend has been paid out of its profits for the year ended 31 December 2013. At the time of this distribution Mr X has an allocated

share of specified profits of £6,000; this is because under Art 81U the value of X is £11,000 and the value of Y is £5,000, therefore the value of X-Y is £6,000. £6,000 of the distribution made on 30 September 2014 is therefore taxable under Schedule DIX. The exemption in Art 78(1A)(d) is irrelevant to this part of the distribution taxable under Schedule DIX.

The remaining £2,000 of the distribution is *prima facie* taxable under Schedule DIII, this is because the distribution has been made out of income type profits which have been subject to tax at 0%. However because the distribution is made out of the profits for the year ended 31 December 2013 and those profits have been used to determine that the distribution made to Mr X on 31 March 2014 was taxable under Schedule DIX, the remaining £2,000 of the distribution will be exempt from tax under Art 78(1A)(d).

For the avoidance of doubt, Art 78(1A)(d) is not relevant where a distribution is wholly taxable under Schedule DIX.

Example 8.3

Continuing Example 8.2.

In the financial period ended 31 December 2014 ABC Ltd reports specified profits of £13,000.

Distribution 3

On 31 May 2015 the company pays a dividend of £3,000, specifying that the dividend has been paid out of its remaining profits for the year ended 31 December 2013. At the time of this distribution Mr X has an allocated share of specified profits of £13,000 (as calculated under Art 81V). Hence the £3,000 dividend will be fully taxable on Mr X under Schedule DIX.

It is fully taxable under Schedule DIX even though the dividend paid on 31 May 2015 has been paid out of the profits which have been used to determine that the distributions made to Mr X on 31 March 2014 and 30 September 2014 were taxable under Schedule DIX. The exemption in Art 78(1A)(d) is irrelevant where the distribution is wholly taxable under Schedule DIX.

It is noted that the exemption in Art 78(1A)(d) may apply to subsequent distributions made out of the profits from the financial period ended 31 December 2014.

Example 8.4

ABC Ltd is a Jersey resident company which is taxable at 0%. ABC Ltd is incorporated on 1 January 2013. Mr X, a Jersey resident individual, is the 100% shareholder in ABC Ltd.

During the financial period ended 31 December 2013 the company reports accounting, income type profits of £12,000, “specified profits” of £11,000 (i.e. there are -£1,000 of tax adjustments between the accounting, income type profits and the specified profits) and a capital gain of £5,000.

Distribution 1

On 31 March 2014 ABC Ltd pays a dividend of £5,000, specifying that the dividend has been paid out of the £5,000 capital gain which the company generated during the financial period ended 31 December 2013. At the time of this distribution Mr X’s allocated share of specified profits is £11,000. Hence the £5,000 dividend will be fully taxable on Mr X under Schedule DIX.

Distribution 2

On 30 September 2014 ABC Ltd pays a dividend of £12,000, specifying that the dividend has been paid out of its profits for the year ended 31 December 2013. At the time of this distribution Mr X has an allocated share of specified profits of £6,000; this is because under Art 81U the value of X is £11,000 and the value of Y is £5,000, therefore the value of X-Y is £6,000. £6,000 of the distribution made on 30 September 2014 is therefore taxable under Schedule DIX. The exemption in Art 78(1A)(d) is irrelevant to this part of the distribution which is taxable under Schedule DIX.

The remaining £6,000 of the distribution is *prima facie* taxable under Schedule DIII, this is because the distribution has been made out of income type profits which have been subject to tax at 0%.

The exemption from tax contained in Art 78(1A)(d) will exempt £5,000 of the remaining part of the distribution from tax, because £5,000 of the profits for the year ended 31 December 2013 were used to determine that the distribution made to Mr X on 31 March 2014 was taxable under Schedule DIX. The remaining £1,000 of the distribution made on 30 September 2014 cannot benefit from the exemption in Art 78(1A)(d) and is therefore taxable under Schedule DIII.

9. TAXPAYER REPORTING

[To follow in later draft]

DRAFT

10. OTHER ISSUES

10.1 IMPACT ON FINANCIAL SERVICES COMPANIES

Legislative reference: Art 81Q

“Specified profits” exist where:

- (i) a company has taxable profits; and
- (ii) those profits have been subject to tax at a rate of less than 20%.

As the taxable profits of a financial services company are subject to tax at the rate of 10%, a financial services company can have “specified profits” and hence is *prima facie* within the scope of the Distribution Rules.

When a financial services company makes a distribution out of its profits which have been subject to tax at 10%, the recipient of that distribution will be entitled to a 10% tax credit irrespective of whether the distribution is taxable on the recipient under either Schedule DIX or Schedule DIII.

10.2 IMPACT ON UTILITY COMPANIES

Legislative reference: Art 81S

Schedule DIX only applies to distributions made by a “relevant company”. A “relevant company” is defined in Art 81Q as:

- (a) a company to which Art 123C applies;
- (b) a company to which Art 123D applies; or
- (c) a company which is a registered person.

A “utility company”, as defined in Art 123C(3), does not fall within the definition of “relevant company” and hence distributions made by a “utility company” will not be subject to tax under Schedule DIX. Therefore the calculation of an individual’s allocated share of specified profits is not relevant in the context of a “utility company”.

Please note, distributions received by Jersey resident individuals from utility companies will be taxable under Schedule DIII and hence utility companies are expected to maintain records such that they can identify whether a particular distribution is made out of taxed profits (whereupon the recipient will be entitled to a 20% tax credit), share capital issued for new consideration or capital gains, as the nature of the profits/reserves out of which the distribution is made will change the tax treatment applying to the shareholder.

10.3 IMPACT ON SCHEDULE A COMPANIES

10.3.1 Basic analysis

For the avoidance of doubt, for the purposes of this guide, a “Schedule A Company” is a company which only has profits which are subject to tax under Schedule A at the rate of 20% (e.g. rental profits, commercial property development profits, etc.) and has no profits subject to tax at 0% or 10%.

“Specified profits” only exist where:

- (i) a company has taxable profits; and
- (ii) those profits have been subject to tax at a rate of less than 20%.

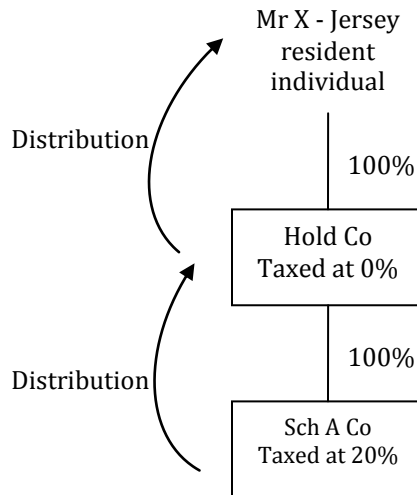
As all of the taxable profits of a “Schedule A Company” been subject to tax at the rate of 20%, a “Schedule A Company” cannot have any “specified profits” and hence any distribution made by a “Schedule A Company” will not be subject to tax under Schedule DIX

Please note, distributions received by Jersey resident individuals from “Schedule A Companies” will be taxable under Schedule DIII and hence “Schedule A Companies” are expected to maintain records such that they can identify whether a particular distribution is made out of taxed profits (whereupon the recipient will be entitled to a 20% tax credit), share capital issued for new consideration or capital gains, as the nature of the profits/reserves out of which the distribution is made will change the tax treatment applying to the shareholder.

10.3.2 Tracking tax credits through holding companies

It is acknowledged that in certain situations the shares in the “Schedule A Company” are not held directly, but rather through a holding company, as in the following example

Example 9.1



The analysis applying at the level of the Schedule A Company is as follows:

The Jersey rental income will be subject to tax at 20% in Jersey, as a consequence the profits from that activity will not fall within the definition of “specified profits” as outlined in Art 81Q. As there are no “specified profits” arising in the company, Mr X will not have an “allocated share of specified profits” in the Schedule A Company.

Therefore when a distribution is made from Schedule A Company to Hold Co, no amount will be added to Mr X’s “allocated share of specified profits” in Hold Co under Art 81X⁵⁹.

Furthermore the receipt of the distribution by Hold Co, which is *prima facie* taxable on Hold Co under Schedule DIII, will not create any “specified profits” in Hold Co; the distribution received being specifically excluded from the definition of “specified profits” in Art 81Q.

Therefore when Hold Co comes to make a distribution, Mr X will not have an “allocated share of specified profits” in Hold Co and hence any distribution will be taxable under Schedule DIII in the hands of Mr X.

We note that Hold Co will pay Jersey tax at 0% on the distribution which it has received and hence under Art 88(4) Hold Co is not permitted to deduct tax from the distribution which it makes. However to maintain

⁵⁹ See section 6 of these guidance notes.

the pragmatic position that the Taxes Office have taken during the years that zero/ten has been in operation the Taxes Office will adopt the following practice:

Where a shareholder is subject to tax on a distribution from a Jersey resident company (Hold Co) under Schedule DIII and it can be demonstrated to the satisfaction of the Comptroller that the profits which are being distributed by Hold Co at that time are in effect profits which have:

(a) been subject to Jersey income tax at a rate exceeding 0% in another Jersey resident company; and

(b) previously been distributed to Hold Co and Hold Co was subject to Jersey tax on that distribution; the shareholder will be entitled to a tax credit calculated by reference to the Jersey tax suffered by the other Jersey resident company.

Applying this treatment to this example, when the distribution is made by Hold Co to Mr X, provided it can be demonstrated that the profits being distributed are in effect the profits which have been subject to tax at 20% in Schedule A Co and have previously been distributed to and taxed on Hold Co (at the rate of 0% in this example); Mr X will be entitled to a tax credit calculated by reference to the tax paid by Schedule A Co on the profits which are, in effect, being distributed now by Hold Co to Mr X.

For the avoidance of doubt, if Hold Co incurs management expenses and is correspondingly entitled to a repayment of tax, that repayment would reduce the amount of tax credit available to Mr X.

10.4 RELIEF FOR UK TAX SUFFERED ON UK PROPERTY INCOME

A number of Jersey resident companies own properties in the UK which are let out and generate rental income. This rental income is potentially liable to tax in the UK in accordance with UK tax law.

Under the terms of the UK/Jersey double tax arrangement, Jersey gives the company in receipt of the rental income a tax credit for the UK tax suffered on that income. However, as the rental income arising in the company will be Schedule DV income and hence will be subject to tax at 0% in Jersey, the company will have no Jersey tax to offset the tax credit against.

The Taxes Office have taken a pragmatic approach during the years that zero/ten corporate tax regime has been in operation so as to give “value” to the tax credit available under the UK/Jersey double tax arrangement. Hence the Comptroller will adopt the following practice from 1 January 2013:

Where a Jersey resident company is in receipt of UK property income the strict Jersey tax analysis is as follows:

- The income arising in the company will be Schedule DV income and hence will be subject to tax at 0% in Jersey, as a consequence the profits from the rental activity will fall within the definition of “specified profits” as outlined in Art 81Q.
- As these are “specified profits” a Jersey resident individual who owns more than 2% of the ordinary share capital in the company will have an “allocated share of specified profits” and hence any distribution from the company to that individual will be taxable under Schedule DIX with no tax credit available.

However, by concession, as the income arising in the company is income which has suffered tax in the UK at a rate of 20% or above and under the terms of the UK/Jersey double tax arrangement the company would be entitled to a tax credit in respect of that income, that income will not be treated as “specified profits” as outlined in Art 81Q. Furthermore when the company distributes these profits and they are subject to tax under Schedule DIII, the shareholder will be entitled to a “notional” non-refundable 20% tax credit, which they can utilise when calculating the amount of Jersey tax payable by the shareholder.

Care should be taken where a Jersey resident company has both UK rental income which is subject to the concession above and other income which is subject to tax in Jersey at 0%, as the other income will remain within the scope of “specified profits” and hence subject to tax under Schedule DIX.

10.5 BROADENING OF CONCESSION TO OTHER INCOME SPECIFICALLY COVERED BY DTA

Section 10.4 of these guidance notes addresses a particular situation where a Jersey resident company is in receipt of UK rental income, which has suffered tax in the UK, and, under the terms of the UK/Jersey double tax arrangement, the Jersey resident company is entitled to a tax credit for the UK tax suffered.

The Comptroller is prepared to extend this concession to other income arising to a Jersey resident company from a source outside of Jersey, where tax has been suffered on that income in the jurisdiction in which the income arose and under the terms of a double taxation arrangement with that jurisdiction, the Jersey company would be entitled to a tax credit for the tax suffered on that income in the other jurisdiction.

For the avoidance of doubt, where the rate of tax suffered on the income in the other jurisdiction is less than 20%, the notional tax credit will be correspondingly reduced. In no circumstances will the notional tax credit exceed 20% and in no circumstances can a taxpayer claim a repayment of the notional tax credit.

10.6 IMPACT ON INDIVIDUALS WHO OWN 2% OR LESS OF THE ORDINARY SHARE CAPITAL

The calculation of an individual's allocated share of specified profits is only required where a Jersey resident individual owns more than 2% of the ordinary share capital in a company. No calculation is therefore required in respect individuals who own 2% or less of the ordinary share capital of a company and such individuals will not be taxable under Schedule DIX. However any distributions which such individuals receive from a company will be taxable under Schedule DIII and hence the tax treatment outlined in section 3.2 of these guidance notes will apply.

10.7 APPLICATION OF THE DISTRIBUTION RULES TO ADMINISTRATOR/ EXECUTOR OF AN ESTATE

The Jersey resident administrator/executor of an estate will be treated as a trustee acting on behalf of the beneficiaries of the estate. For the avoidance of doubt, as the administrator/executor is acting in the capacity of a trustee, no distribution made by a company to the administrator/executor will be taxable on the administrator/executor under Schedule DIX. The administrator/executor will however be subject to tax under Schedule DIII on the distributions received.

Where a distribution is *prima facie* taxable under Schedule DIII, the exemptions in Art 78(1A) may mean that a proportion/all of the distribution is not subject to tax in the hands of the administrator/executor.

Consistent with the treatment applied by the Taxes Office during the period that the deemed distribution rules were in operation, where an amount of a distribution remains taxable on the administrator/executor under Schedule DIII and:

- (i) none of the beneficiaries of the estate are resident in Jersey – that amount will be exempt from taxation in the hands of the administrator/executor;
- (ii) all of the beneficiaries of the estate are resident in Jersey – that amount will be fully taxable in the hands of the administrator/executor;
- (iii) the beneficiaries of the estate are a mixture of Jersey resident and non-Jersey resident individuals – an appropriate proportion of the amount, reflecting the interest of the non-resident beneficiaries, will be exempt from taxation in the hands of the administrator/executor.

11. GLOSSARY

“attributable earnings”: a term from the intermediary services vehicles rules defined in Art 77B

“commercial loan”: for a loan from a member (or person connected to a member) to a company to be on a commercial basis it must (a) carry a commercial rate of interest; and (b) the terms of the loan must have been documented such that they can be provided to the Taxes Office on request

“company distribution”: defined in Art 81X(1) as a distribution from a distributing company to a receiving company

“connected person”: defined in Art 3A

“deemed distribution rules”: the anti-avoidance tax measures which were, *broadly*, in operation between 2009 and 2011, under these rules Jersey resident shareholders could be taxed on the profits arising in Jersey resident companies even if those companies had not made a distribution

“distribution rules”: the rules contained in Part 2 of Income Tax (Amendment No. 41) (Jersey) Law 201-

“distribution”: in relation to a company is defined in Art 3AE

“distributing company”: defined in Art 81X(1) as a relevant company which makes a company distribution to a receiving company

“existing loan”: a loan which have been advanced by a member (or person connected to a member) to a company on or before 31 December 2012

“financial period”: this term is defined in Art 4A as *broadly* the period for which the company’s accounts are made up, however this broad definition is subject to the Comptroller’s powers to deem a financial period in certain circumstances (for example Art 64B – change of financial period and accounting date)

“financial services company”: defined in Art 3(1)

“full attribution rules”: the specific anti-avoidance measures which applied to investment companies and personal services companies and which were, *broadly*, in operation between 2009 and 2011

“immediately previous relevant time”: means the time at which a distribution was last made to the particular individual, provided that, at that time, the individual owned more than 2% of the ordinary share capital in the company

“Income Tax Law”: the Income Tax (Jersey) Law 1961, as amended

“individual’s allocated share of specified profits”: a key concept in the distribution rules, it is calculated by following the appropriate steps as outlined in these guidance notes

“individual’s current period of share ownership”: means the period since the previous time that the individual owned 2% or less of the ordinary share capital of the company

“intermediary services vehicles”: a term from the intermediary services vehicles rules defined in Art 77A(1)

“intermediary services vehicles rules”: the rules contained in Part 3 of Income Tax (Amendment No. 41) (Jersey) Law 201- which seek to prevent individual using companies to disguise employment income

“Jersey resident company”: defined in Art 123(1)(a) as any company incorporated in Jersey (subject to a specific exemption) or any company the business of which is managed and controlled in Jersey⁶⁰

“multi-tiered structure”: means a structure in which companies own shares in other companies

“new consideration”: defined in Art 3AE(6) as consideration not provided (directly or indirectly) out of the assets of a company, excluding (a) any amount retained by the company by way of capitalizing a distribution, or (b) the transfer of shares to a company pursuant to the purchase or redemption by the company of its own shares

“ordinary shares”: defined in Art 3(1) as all the issued share capital (by whatever name called) of the company, other than preference shares

“P-Q formula”: the part of the calculation of an individual’s allocated share of specified profits which seeks to prevent individuals paying excessive amounts of tax, particularly where distributions are made in the early years of a company or an individual receives a distribution shortly after becoming a shareholder

“preference shares”: defined in Art 3(1) as, in relation to a company, a share which confers a right to a dividend at a fixed percentage of the nominal value of the share, but no other right to share in the profits of the company⁶¹

⁶⁰ In these guidance notes where the term “Jersey resident company” is used this also refers to a non-Jersey resident company with a permanent establishment in Jersey.

⁶¹ For the avoidance of doubt, it is the Comptroller’s view that a share which on a winding-up gives the holder a right to assets in excess of the new consideration originally given on the issuance of the share is not a preference share, irrespective of the holder’s right to dividends, as the holder has the right to share in the profits of the company.

“permanent establishment”: defined in Art 3(1) as including a branch of a company, a factory, shop, workshop, quarry or a building site, and a place of management of the company, but the fact that the directors of a company regularly meet in Jersey shall not, of itself, make their meeting place a permanent establishment

“receiving company”: defined in Art 81X(1) as a relevant company which receives a company distribution from a distributing company

“relevant company”: defined in Art 81Q(1) as (a) a company to which Art 123C applies; (b) a company to which Art 123D applies; or (c) a company which is a registered person

“relevant distribution”: defined in Art 81R as, *broadly*, a distribution made to an individual which is equal to or less than the individual’s allocated share of specified profits; where a distribution is greater than the individual’s allocated share of specified profits, the distribution is a relevant distribution up to the amount of the individual’s allocated share of specified profits

“relevant dividend”: a term which formed part of the deemed distribution rules, it was defined in Art 81B(1) as so much of any dividend paid out of the relevant profits of a financial period of a company on or before (a) if the last day of the following financial period is 31 December, that day; or (b) in any other case, 31 December next after the end of the following financial period

“relevant financial period”: defined in Art 81Q(1) as a financial period of a relevant company ending after 31 December 2011 where the year of assessment in which the financial period ends is the year of assessment immediately preceding a current year of assessment

“relevant profits”: a term which formed part of the deemed distribution rules, it was defined in Art 81B(1) as the taxable profits of the company for a financial period less any preference share dividend paid out of those profits before the last day of the following financial period

“Schedule A Company”: means a company which only has profits which are subject to tax under Schedule A at the rate of 20% (e.g. rental profits, commercial property development profits, etc.) and has no profits subject to tax at 0% or 10%

“Schedule DIII”: the case of Schedule D income under which distributions from Jersey resident companies are taxable, other than those distributions which are taxable under Schedule DIX

“Schedule DIX”: the case of Schedule D income under which relevant distributions from Jersey resident companies, or non-resident companies with a permanent establishment in Jersey, are taxable

“simplified basis of taxation”: under Art 81R(4)-(6) an individual can choose to be taxed on all the distributions that they receive and hence none of the calculations in these guidance notes are required

“specified profits”: defined in Art 81Q(1) as, *broadly*, the taxable profits of the company for a financial period, less (a) any preference share dividend paid out of those profits before the last day of the following financial period; (b) any distribution received by the company during the financial period which is chargeable to tax on the company under Schedule DIII (subject to a number of specific exclusions); and (c) any amount chargeable to tax under Schedule DIIA as a consequence of the intermediary services vehicles rules

“stock dividend”: defined in Art 3(1) as (a) share capital issued by a company in consequence of the exercise by any person of an option conferred on the person to receive, in respect of shares of the company, either cash or additional share capital; (b) bonus share capital issued by a company in respect of shares in the company of a relevant class

“trading company”: defined in paragraph 2 of Schedule A1

“trading group”: defined in paragraph 3 of Schedule A1

“utility company”: defined in Art 123C(3) as, *broadly*, Jersey Water, Jersey Gas, Jersey Electricity, any person licensed to run part or all of a public telecommunications system under the Telecommunications (Jersey) Law 2002, or a person authorized to convey letters by a license granted under the Postal Services (Jersey) Law 2004

APPENDIX A

Step-by-step guide – what happens the first time a distribution is made to a Jersey resident individual who owns more than 2% of the ordinary share capital on or after 1 January 2013

Step 1

Identify the amount of the distribution made to the individual.

Step 2

Determine whether Art 81T applies. This requires a review of the three tests in Art 81T(1).

- If **yes**, go to **Step 3**
- If **no**, the amount of the distribution identified in Step 1 is taxable under Schedule DIII, go to **Step 12**

Step 3

Identify the financial periods of the company ending after 31 December 2011 which fall within the individual's "current period of share ownership".

Step 4

Identify the "relevant financial period".

Step 5

Sum together the specified profits for each financial period which falls within the individual's current period of share ownership (identified in Step 3) up to and including the "relevant financial period" (identified in Step 4).

Step 6

Determine whether at 31 December 2011:

- (i) the individual owned more than 2% of the ordinary share capital in the company; and
 - (ii) the company was a Jersey trading company taxed at 0% or a financial services company taxed at 10%
- If **yes**, determine the amount in accordance with paragraphs 11 and 12 of schedule 5, as appropriate⁶²
 - If **no**, the amount is nil

Step 7

Add the amount calculated in Step 5 to the amount calculated in Step 6 (if any).

Step 8

Apply the following "scaling calculation":

⁶² Please note, the amount calculated in accordance with paragraphs 11 and 12 may be nil.

Total calculated in Step 7 x A/B
Where A = the number of shares owned by the Jersey resident individual shareholder

Where B = the number of ordinary shares of the company

Step 9

Apply the “P-Q formula” to the amount calculated in Step 8 to determine the “individual’s allocated share of specified profits”.

Step 10

Compare the amount of the distribution to the “individual’s allocated share of specified profits”.

- If the amount of the distribution is **less than, or equal to**, the “individual’s allocated share of specified profits” the whole amount of the distribution is taxable under Schedule DIX, **go to Step 11**
- If the amount of the distribution is **greater than** the “individual’s allocated share of specified profits”, the amount of the distribution equal to the “individual’s allocated share of specified profits is taxable under Schedule DIX, **go to Step 11** and the amount of the distribution in excess of the “individual’s allocated share of specified profits” is taxable under Schedule DIII, **go to Step 12**

Step 11

As an amount taxable under Schedule DIX the whole of the distribution is taxable income for the individual, without any tax credits⁶³ and irrespective of the nature of the profits out of which the distribution is made.

Step 12

As an amount taxable under Schedule DIII the distribution is *prima facie* taxable, but the nature of the profits/reserves out of which the distribution has been made may change the tax analysis applying to the individual, as the Income Tax Law offers a number of exemptions from tax and the application of tax credits.

⁶³ Other than a 10% tax credit where the company making the distribution is a “financial services company”

APPENDIX B

Basic explanatory example

Initial facts

Miss Edwards starts a plumbing company (Jersey Plumbing Ltd) on 1 March 2013. Jersey Plumbing Ltd is a Jersey resident company, trading in the island.

Jersey Plumbing Ltd draws up its first set of accounts to 31 January 2014 and then 31 January annually thereafter.

Miss Edwards is Jersey resident and on incorporation introduces £5,000 in exchange for 5,000 ordinary shares in Jersey Plumbing Ltd. As a consequence Miss Edwards owns 100% of the ordinary share capital of Jersey Plumbing Ltd.

Financial period ended 31 January 2014 (FP1)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP1 it has made a loss of £500.

For simplicity, Jersey Plumbing Ltd's tax loss (as calculated under the Income Tax Act) is the same as its accounting loss. Hence the "specified profits" for FP1 are nil.

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP1:

- share capital: £5,000
- profit and loss reserve: (£500)
- total reserves: £4,500

Financial period ended 31 January 2015 (FP2)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP2 it has made a profit of £750.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP2 (looked at in isolation) are the same as its accounting profits. For the avoidance of doubt however, when calculating the "specified profits" for FP2, the brought forward loss will be deductible under Art 108 and hence the "specified profits" for FP2 are £250 (£750-£500).

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP2:

- share capital: £5,000
- profit and loss reserve: £250
- total reserves: £5,250

Financial period ended 31 January 2016 (FP3)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP3 it has made a profit of £1,500.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP3 are the same as its accounting profits. Hence the "specified profits" for FP3 are £1,500.

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP3:

- share capital: £5,000
- profit and loss reserve: £1,750
- total reserves: £6,750

Financial period ended 31 January 2017 (FP4)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP4 it has made a profit of £2,000.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP4 are the same as its accounting profits. Hence the "specified profits" for FP4 are £2,000.

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP4:

- share capital: £5,000
- profit and loss reserve: £3,750
- total reserves: £8,750

Financial period ended 31 January 2018 (FP5)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP5 it has made a profit of £1,500.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP5 are the same as its accounting profits. Hence the "specified profits" for FP5 are £1,500.

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP5:

- share capital: £5,000
- profit and loss reserve: £5,250
- total reserves: £10,250

Financial period ended 31 January 2019 (FP6)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP6 it has made a profit of £1,100.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP6 are the same as its accounting profits. Hence the "specified profits" for FP6 are £1,100.

Jersey Plumbing Ltd pays a dividend from its profit and loss reserve of £1,300 on 30 June 2018.

Reserves position at end of FP6:

- share capital: £5,000
- profit and loss reserve: £5,050
- total reserves: £10,050

Tax analysis applying to dividend:

1. The dividend is a "distribution" (Art 3AE(1)(a)).
2. As Jersey Plumbing Ltd is a Jersey resident company it is necessary to determine whether the distribution is a "relevant distribution" and hence taxable under Sch DIX (Art 62 and Art 81R).
3. Art 81T(1)(a): the distribution is made to the individual in or after YoA 2013 following a relevant financial period of the company⁶⁴.
 - a. Distribution is made in YoA 2018
 - b. Jersey Plumbing Ltd has a relevant financial period, the financial period ending in YoA 2017 is FP4 (i.e. the financial period ended 31 January 2017 is the relevant financial period)
4. Art 81T(1)(b): the whole or part of that relevant financial period fell within the individual's current period of share ownership⁶⁵.
 - a. Miss Edwards owned more than 2% of the ordinary share capital in Jersey Plumbing Ltd during FP4
5. Art 81T(1)(c): the distribution is the first distribution made to the individual in the circumstances described in (a) and (b) above. All three tests (i.e. (a), (b) and (c)) are met so this distribution is within the scope of Art 81T.
6. Art 81T(2)(a) Step 1:
 - a. SP is aggregate of company's specified profits for each FP during the individual's current period of share ownership, up to and including the relevant financial period (which is FP4) (i.e. £0 (FP1) + £250 (FP2) + £1,500 (FP3) + £2,000 (FP4) = £3,750)

⁶⁴ "Relevant financial period" means a financial period of a relevant company ending after 31 December 2011 where the year of assessment in which the financial period ends is the year of assessment immediately preceding a current year of assessment (Art 81Q).

⁶⁵ "Share ownership" refers to the period during which a person owns more than 2% of the ordinary share capital of a company (Art 81Q).

- b. Multiplied by Miss Edwards' proportionate ownership of the ordinary share in Jersey Plumbing Ltd at the time of the distribution (i.e. 100%)⁶⁶
 - c. Therefore the amount calculated at Step 1 = £3,750.
7. Art 81T(2)(b) Step 2:
- a. P is the amount calculated in Step 1 (i.e. £3,750)
 - b. Q is *broadly* the amount of any distribution made by Jersey Plumbing Ltd to Miss Edwards prior to this distribution on which Miss Edwards has been chargeable to tax under DIII(f). This is the first distribution from Jersey Plumbing Ltd to Miss Edwards and hence the value of Q is nil⁶⁷
 - c. Therefore the amount calculated at Step 2 = £3,750
8. Art 81T(2)(c) Step 3:
- a. Determine the amount of the individual's allocated share of specified profits under (3) or (4) as appropriate
9. Art 81T(3): as the amount calculated under Step 2 (£3,750) is greater than, or equal to, the amount of the distribution (£1,300), the amount of the individual's allocated share of specified profits is the amount calculated in Step 1 (£3,750). As Art 81T(3) applies there is no requirement to look at Art 81T(4).
10. As the amount of the distribution (£1,300) is less than Miss Edwards' allocated share of specified profits (£3,750) the whole amount of the distribution (i.e. £1,300) is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.

In a situation like this where Miss Edwards owns 100% of the ordinary share capital and has not previously received a distribution from Jersey Plumbing Ltd the above analysis can be shortened to:

1. Aggregate the company's specified profits for each FP during the individual's current period of share ownership, up to and including the relevant financial period (which is FP4) (i.e. £0 (FP1) + £250 (FP2) + £1,500 (FP3) + £2,000 (FP4) = £3,750), that amount is the individual's allocated share of specified profits.
2. Compare the amount of the individual's allocated share of specified profits (£3,750) to the distribution (£1,300).
3. As the amount of the distribution (£1,300) is less than Miss Edwards' allocated share of specified profits (£3,750) the whole amount of the distribution (i.e. £1,300) is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.

⁶⁶ Shortcut – where the individual owns 100% of the ordinary share capital it is possible to ignore this specific part of the calculation.

⁶⁷ Shortcut – where the value of Q is nil, the individual's allocated share of specified profit will be the amount calculated in Step 1.

Financial period ended 31 January 2020 (FP7)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP7 it has made a profit of £800.

For simplicity, Jersey Plumbing Ltd's taxable profits for FP7 are the same as its accounting profits. Hence the "specified profits" for FP7 are £800.

Jersey Plumbing Ltd pays a dividend of £1,050 from its profit and loss reserve on 30 June 2019.

Reserves position at end of FP7:

- share capital: £5,000
- profit and loss reserve: £4,800
- total reserves: £9,800

Tax analysis applying to dividend:

1. The dividend is a "distribution" (Art 3AE(1)(a)).
2. As Jersey Plumbing Ltd is a Jersey resident company it is necessary to determine whether the distribution is a "relevant distribution" and hence taxable under Sch DIX (Art 62 and Art 81R).
3. Art 81V applies this time because the distribution is the first distribution made to Miss Edwards in a YoA (i.e. YoA 2019) following a YoA in which Art 81T applied (i.e. YoA 2018).
4. Art 81V(2)(a) Step 1:
 - a. SP is the aggregate of the company's specified profits for each FP beginning with the FP ending in the YoA in which a distribution was last made to the individual (i.e. FP5 because that is the FP ending in YoA 2018) up to and including the relevant financial period (i.e. FP5) (the law itself acknowledges that these might be the same). Therefore SP is £1,500
5. Art 81V(2)(b) Step 2:
 - a. As Miss Edwards' ownership of Jersey Plumbing Ltd has not changed since the time of the previous distribution (i) applies
 - b. X is the individual's allocated share of specified profits at the time of the previous distribution (i.e. £3,750)
 - c. Y is the amount of the relevant distribution made at the time of the previous distribution (i.e. £1,300)
 - d. The amount calculated in Step 2 is X-Y (i.e. £2,450)
6. Art 81V(2)(c) Step 3:
 - a. Add together the amounts calculated in Step 1 and Step 2 (i.e. £3,950)
7. Art 81V(2)(d) Step 4:
 - a. P is the amount calculated in Step 3 (i.e. £3,950)

- b. Q is determined in accordance with Art 81V(3). As at the time of the previous distribution Art 81T(3) applied (see part 9. of the previous analysis), the amount of Q now is equal to the amount of Q then (i.e. nil)
- c. Therefore the amount calculated at Step 4 is £3,950
- 8. Art 81V(2)(e) Step 5:
 - a. Determine the amount of the individual's allocated share of specified profits under (4) or (5) as appropriate
- 9. As the amount calculated under Step 4 (£3,950) is greater than, or equal to, the amount of the distribution (£1,050), the amount of the individual's allocated share of specified profits is the amount calculated in Step 3 (£3,950). As Art 81V(4) applies there is no requirement to look at Art 81V(5).
- 10. As the amount of the distribution (£1,050) is less than Miss Edwards' allocated share of specified profits (£3,950) the whole amount of the distribution (i.e. £1,050) is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.

In a situation like this where Miss Edwards owns 100% of the ordinary share capital and the previous distribution from Jersey Plumbing Ltd was fully taxable under Sch DIX, the above analysis can be shortened to:

1. Take Miss Edwards' allocated share of specified profits at the time of the previous distribution (£3,750) and subtract the amount of that distribution that was taxable under Sch DIX (£1,300). Miss Edwards' remaining allocated share of specified profits is therefore £2,450.
2. Add to that amount the aggregate of the company's specified profits for each FP beginning with the FP ending in the YoA in which a distribution was last made to the individual (i.e. FP5 because that is the FP ending in YoA 2018) up to and including the relevant financial period (i.e. FP5) (the law itself acknowledges that these might be the same). Therefore SP is £1,500.
3. Add those two amounts together (£3,950); this is the individual's allocated share of specified profits.
4. Compare the amount of the individual's allocated share of specified (£3,950) to the distribution (£1,050).
5. As the amount of the distribution (£1,050) is less than Miss Edwards' allocated share of specified profits (£3,950) the whole amount of the distribution (i.e. £1,050) is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.

Financial period ended 31 January 2021 (FP8)

Jersey Plumbing Ltd trades throughout this period. When it draws up its accounts for FP8 it has made a loss of £800.

For simplicity, Jersey Plumbing Ltd's tax loss (as calculated under the Income Tax Act) is the same as its accounting loss. Hence the "specified profits" for FP8 are nil.

Jersey Plumbing Ltd does not make a distribution.

Reserves position at end of FP8:

- share capital: £5,000
- profit and loss reserve: £4,000
- total reserves: £9,000

Financial period ended 31 January 2022 (FP9)

Jersey Plumbing Ltd does not trade during this period. The company is subsequently liquidated on 30 June 2022. A total of £9,000 is returned to Miss Edwards on the liquidation.

Tax analysis applying to liquidation:

1. The liquidation is a “distribution” (Art 3AE(1)(b)).
2. As Jersey Plumbing Ltd is a Jersey resident company it is necessary to determine whether the distribution is a “relevant distribution” and hence taxable under Sch DIX (Art 62 and Art 81R).
3. Art 81V applies because the distribution is the first distribution made to Miss Edwards in a YoA (i.e. YoA 2022) following a YoA in which Art 81T applied⁶⁸.
4. Art 81V(2)(a) Step 1:
 - a. SP is the aggregate of the company’s specified profits for each FP beginning with the FP ending in the YoA in which a distribution was last made to the individual (i.e. FP6 because that is the FP ending in YoA 2019) up to and including the relevant financial period (i.e. FP8). Therefore SP is £1,900 (i.e. £1,100 (FP6) + £800 (FP7) + £0 (FP8))
5. Art 81V(2)(b) Step 2:
 - a. As Miss Edwards’ ownership of Jersey Plumbing Ltd has not changed since the time of the previous distribution (i) applies
 - b. X is the individual’s allocated share of specified profits at the time of the previous distribution (i.e. £3,950)
 - c. Y is the amount of the relevant distribution made at the time of the previous distribution (i.e. £1,050)
 - d. The amount calculated in Step 2 is X-Y (i.e. £2,900)
6. Art 81V(2)(c) Step 3:
 - a. Add together the amounts calculated in Step 1 and Step 2 (i.e. £4,800)
7. Art 81V(2)(d) Step 4:
 - a. P is the amount calculated in Step 3 (i.e. £4,800)
 - b. Q is determined in accordance with Art 81V(3). As at the time of the previous distribution Art 81V(4) applied (see part 9. of the previous analysis), the amount of Q now is equal to the amount of Q then (i.e. nil)
 - c. Therefore the amount calculated at Step 4 is £4,800
8. Art 81V(2)(e) Step 5:

⁶⁸ Art 81T applied in YoA 2018; it is irrelevant that Art 81V subsequently applied in YoA 2019.

- a. Determine the amount of the individual's allocated share of specified profits under (4) or (5) as appropriate
9. As the amount calculated under Step 4 (£4,800) is less than the amount of the distribution (£9,000), the amount of the individual's allocated share of specified profits is the higher of the amount calculated in Step 4 (i.e. £4,800) or nil. Therefore the individual's allocated share of specified profits is £4,800.
10. As the amount of the distribution (£9,000) is greater than Miss Edwards' allocated share of specified profits (£4,800), £4,800 of the distribution is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.
11. The remaining £4,200 is made out of the initial share capital and under Art 78 is exempt from taxation.

In a situation like this where Miss Edwards owns 100% of the ordinary share capital and the previous distribution from Jersey Plumbing Ltd was fully taxable under Sch DIX, the above analysis can be shortened to:

1. Take Miss Edwards' allocated share of specified profits at the time of the previous distribution (£3,950) and subtract the amount of that distribution that was taxable under Sch DIX (£1,050). Miss Edwards' remaining allocated share of specified profits is therefore £2,900.
2. Add to that amount the aggregate of the company's specified profits for each FP beginning with the FP ending in the YoA in which a distribution was last made to the individual (i.e. FP6 because that is the FP ending in YoA 2019) up to and including the relevant financial period (i.e. FP8). Therefore SP is £1,900 (i.e. £1,100 (FP6) + £800 (FP7) + £0 (FP8)).
3. Add those two amounts together (£4,800); this is the individual's allocated share of specified profits.
4. Compare the amount of the individual's allocated share of specified (£4,800) to the distribution (£9,000).
5. As the amount of the distribution (£9,000) is greater than Miss Edwards' allocated share of specified profits (£4,800), £4,800 of the distribution is a "relevant distribution" and hence taxable on Miss Edwards under Sch DIX.
6. The remaining £4,200 is made out of the initial share capital and under Art 78 is exempt from taxation.

Summary of taxable amounts

Financial period	Specified profits
FP 1	Nil
FP 2	£250
FP 3	£1,500
FP 4	£2,000
FP 5	£1,500
FP 6	£1,100
FP 7	£800
FP 8	Nil

FP 9	Nil
Total	£7,150

Distribution	Taxable under Sch DIX
Dividend on 30 June 2018	£1,300
Dividend on 30 June 2019	£1,050
Liquidation on 30 June 2022	£4,800
	£7,150

DRAFT

APPENDIX D

Example of records expected to be maintained by company to identify the nature of the profits/reserves/funds out of which any distribution is made

	Share capital issued for new consideration ⁶⁹	Income type profits taxed at 0% ⁷⁰	Income type profits taxed at 20% ⁷¹	Capital profits	Totals
B/f 01/01/201X	£100,000	£200,000	£100,000	£150,000	£550,000
Current year performance		£75,000			£75,000
Distributions out of brought forwards				(£150,000)	(£150,000)
Distributions out of current year amounts		(£50,000)			(£50,000)
C/f 31/12/201X	£100,000	£225,000	£100,000	Nil	£425,000

Assuming there is one Jersey resident shareholder who owns 1% of the ordinary share capital (and hence taxable under Schedule DIII), during the year he/she will have received a distribution in the amount of £2,000 (1% x (£150,000+£50,000)). Of that amount £1,500 will be from capital profits and hence not taxable on receipt. The remaining £500 will be from income type profits taxed at 0% and hence will be taxable income (with no tax credit) for the shareholder.

The amounts shown above should be capable of reconciliation to the figures shown in the company's annual accounts. In cases of uncertainty the Comptroller is happy to discuss particular transactions and agree how they should be shown in the records maintained by the company.

⁶⁹ Note this column is only for share capital issued for new consideration, this does not necessarily equate to all share capital (e.g. profits which have been capitalised would not fall within this heading).

⁷⁰ This column refers to accounting profits which have been subject to tax at 0% rather than taxable profits.

⁷¹ This column refers to accounting profits which have been subject to tax at 20% rather than taxable profits.