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10 DOWNING STREET

PRIME MINISTER

Attached is the promised
note from Peter Rowland. I have
commissioned an urgent note from
the Treasury on the details of
what he proposes.

8 September 1983

We shall need to
have a meeting with
the Treasury, & Lord
Cockfield on 10-11
the note has been considered
urgently. Say in
1 month from now?

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

7 September, 1983

Dear *Margaret,*

In accordance with your request the other day, I attach a summary of the objectives, now numbering six, together with an illustration of what could be achieved merely by re-writing the present law. N.B. The re-draft is approximately 40% shorter than the original even though it leaves nothing out.

The next step needed is simplification of the contents by pruning avoidable complications and finding neater ways to express those which must be retained. This would certainly result in further substantial savings of space as well as greater clarity but I am not enclosing my detailed suggestions pending knowing the Revenue's views.

All in all, I have no doubt at all that the present ever-expanding jungle of tax provisions could be reduced to a compact and much more comprehensible code. The advantages of doing so would be hard to exaggerate. By way of illustration, in one current case it seems that a badly-drafted phrase has already wasted some 247 hours, 14 of them by senior executives, and it has not got as far as Counsel yet, let alone to appeal. Quaere: the amount of time the I.R., and other companies and their advisers, have spent on the point.

The final question is what can be done. I took your hint and went to see Lord Cockfield who was very kind and helpful, pointing out the difficulties which arise from the way the Civil Service is structured but not ruling the proposition out.

On reflection, I think the best way forward would be a short and unpublicised trial run. If a lawyer from the Revenue with good drafting experience together with an official qualified to pronounce on policy matters - both picked for their enthusiasm and constructive outlook! - were to work with me for a couple of weeks or so there would be a sound basis for final decisions on all aspects. However, the only chance of the Revenue ever agreeing would be if you were to take up the cudgels yourself.

Please let me know what happens or I can supply any information or do anything else to help the proposition along. I would of course make myself available at any time.

I am gathering more information on the other matters I mentioned.

It was a great pleasure to see you again and very good of you to spare so much time.

enclosure:

Your ever
PMBR

Peter M.B. Rowland

Objects

The immediate objects are:-

1. To shorten the Acts and clarify their wording.
2. To simplify the contents by cutting out provisions of little practical importance.
3. To eliminate anomalies and ambiguities so far as may be.
4. To reduce the need for and number of extra-statutory concessions.
5. To override undesirable Court decisions.
6. To consolidate the relevant Acts.

The ultimate objects are to reduce the time management now has to devote to taxation and to enable the energies of many accountants and others to be channelled into more productive fields.

My version

Section 53. Purchase of own shares by unquoted trading company

(1) A payment made on or after 6 April 1982 by an unquoted company which is either a trading company or the holding company of a trading group on the redemption, repayment or purchase of its shares shall not be a distribution for the purposes of the Corporation Tax Acts if the conditions set out in subsections (2) to (6) are satisfied or if subsection (7) applies.

(2) The redemption, repayment or purchase (in subsections (3) to (6) of this section and Schedule 9 referred to as "the purchase") must be made wholly or mainly to benefit a trade carried on by the company or any of its 75 per cent subsidiaries and must not form part of a scheme or arrangement a main purpose of which is;

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

(3) The vendor and, if the shares are held through a nominee, the nominee, must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and for this purpose the residence and ordinary residence of personal representatives shall be those of the deceased at his death and in the case of trustees shall be determined by Section 52 of the Capital Gains Act 1979. The reference to ordinary residence shall be disregarded in the case of a company.

(4) The vendor must have owned the shares throughout the five years ending with the purchase, but ownership by a spouse who transferred shares to the vendor when they were living together shall be treated as the vendor's unless at the time of the purchase she is alive and they are not living together.

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

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

(7) Such a payment as is referred to in subsection (1) shall not be treated as a distribution if, so far as it is not applied in paying capital gains tax charged on the redemption, ^{re}payment or purchase, it is wholly or substantially applied within two years of a death in discharging the payee's liability to capital transfer tax charged on that death, but only to the extent that discharging it otherwise than by the redemption, repayment or purchase of shares

of a company falling within subsection (1) would have caused undue hardship.

SCHEDULE 9

Section 53. PURCHASE OF OWN SHARES BY UNQUOTED TRADING COMPANY

1. Shares which for capital gains tax purposes would be identified with earlier holdings under Chapter II of Part IV of the Capital Gains Tax Act 1979 (reorganisation of share capital, conversion of securities etc.), not being shares allotted for payment, or comprised in capital to which Section 34 of the Finance (No. 2) Act 1975 (stock dividends) applies, shall be so identified for the purposes of subsections (4) and (5). Subject thereto, shares acquired earlier shall be taken into account before shares acquired later and disposals shall be on a last in first out basis.

2.-(1) Subject to paragraph 8 below, where immediately after the purchase the vendor owns shares of the company the condition that his interest must be substantially reduced shall not be satisfied unless the percentages both of the nominal share capital which he owned, and of the profits available for distribution which he would have received on a full distribution, are lower by at least one quarter immediately after the purchase than they were immediately before.

(2). In determining the division of profits for the purposes of sub-paragraph (1) any person entitled to periodic distributions based on fixed rates or amounts shall be treated as receiving his maximum entitlement for a year.

(3) For the purposes of sub-paragraph (1) the "profits available for distribution" shall comprise £100 plus

(a) the profits available for distribution for the purposes of Part III of the Companies Act 1980, plus,

(b) the total of the amounts, if any, to which persons are entitled under (a) above

so however that in computing the profits available for distribution before the purchase there shall be substituted, if greater, the total amount payable by the company upon that and any contemporaneous purchase.

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

3. If immediately after the purchase any associate of the vendor owns shares of the company the combined interests of the vendor and his associates must subject to paragraph 8 below have been substantially reduced and the provisions of paragraph 2 shall be applied as though the vendor's interest included those of his associates.

53. Purchase of own shares by unquoted trading company

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

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

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

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

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

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

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

SCHEDULE 9

Section 53

PURCHASE OF OWN SHARES BY UNQUOTED TRADING COMPANY

Conditions for application of section 53 (1)

1.-(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.

(2) The residence and ordinary residence of trustees shall be determined for the purposes of this paragraph as they are determined under Section 52 of the Capital Gains Tax Act 1979 for the purposes of that Act.

(3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this paragraph to be the same as the residence and ordinary residence of the deceased immediately before his death.

(4) The references in this paragraph to a person's ordinary residence shall be disregarded in the case of a company.

2.-(1) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.

(2) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse living with him then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse living with him, any period during which the shares were owned by that person shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor.

(3) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner -

(a) any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor, and

(b) that sub-paragraph shall have effect as if it referred to three years instead of five.

(4) Where the vendor is a personal representative of a deceased owner -

(a) any period during which the shares were owned by the deceased shall be treated for the purposes of sub-paragraph (1) above as a period of ownership by the vendor, and

(b) that sub-paragraph shall have effect as if it referred to three years instead of five.

(5) In determining whether the condition in this paragraph is satisfied in a case where the vendor acquired shares of the same class at different times -

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

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

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

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

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

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

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

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

(5) In sub-paragraph (3) above "profits available for distribution" has the same meaning as it has for the purposes of Part III of the Companies

Act 1980, but subject to sub-paragraph (6) below.

(6) For the purposes of sub-paragraph (3) above the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased -

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

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

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

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

I have much admiration for what the draftsmen achieve but nevertheless think that present methods could be improved.

To illustrate what is possible I have made a redraft of section 53 of the Finance Act 1982 together with the first four paragraphs of Schedule 9. It will be seen that there is a saving of some 40%, which would be greater if the content were to be simplified as well.

The re-draft is based on the following;-

- (i) inserting main principles in the section and only relegating matters of detail and administration to the Schedule - see the new sub-sections (3) to (6), important matters previously lost in Schedule 9.
- (ii) Avoiding the unnecessary repetition of words and phrases. Compare for instance the new sub-section (3) and the corresponding phrases in the Schedule both marked with large capital A.
- (iii) Replacing pedestrian phrases by shorter or neater ones where available - see the passages respectively marked with a Capital B.
- (iv) Re-arranging the subject matter wherever necessary to achieve the foregoing important re-arrangement appears in the re-draft, the convoluted provisions of sub-paragraphs 3 (2) - (6) of Schedule 9 having been particularly difficult to deal with.