Modernising the taxation of distributions and repayments of capital from companies

Consultation Response by Simmons & Simmons LLP

1. Introduction

Simmons & Simmons LLP welcomes the opportunity to participate in HMRC's open consultation on the modernisation of the taxation of distributions and repayments of capital from companies, published on 23 June 2026 (the "Consultation").

We understand that Consultation is seeking views on proposals to:

(A) review the treatment of 'new consideration' and 'repayments of capital' in certain scenarios;

(B) align the tax treatment of distributions from non-UK resident companies with that of distributions from UK resident companies;

(C) review the interaction of the distributions regime with the loans to participators regime, and how the loans to participators regime might be extended to cover loans received from non-UK companies; and

(D) reform the demergers provisions, the Purchase of Own Shares ("POS") relief, and the Transactions in Securities ("TIS") rules.

Simmons & Simmons LLP is a leading international law firm with offices in major business and financial centres throughout Europe, the Middle East, and Asia. Our tax practice regularly advises corporate groups, their shareholders, private equity and other investment fund structures on the UK tax treatment of distributions, corporate reorganisations, demergers and share buybacks, and accordingly has a direct interest in the subject matter of the Consultation.

We have aligned our responses to the questions set out in the Consultation.

We would be happy to participate in further formal or informal discussions in relation to the subject matter of this Consultation, particularly in light of the Consultation's express comments that HMRC will "only move forward with these proposals after consultation where doing so is in line with the government's objectives".

2. Introductory comments

We set out below our comments on the proposals in the Consultation, before addressing the individual questions in detail in Section 3.

The "frozen capital" mechanism proposed in Chapter 2 abandons the certainty of the current system in favour of one which will often require taxpayers to obtain historic information that is difficult (or practically impossible) to locate, and which will result in unfair outcomes for third party purchasers. We are not in favour of this proposal and do not consider that the Consultation has shown that the scale of the underlying problem justifies that significant adverse trade-off, particularly given the transactions in securities legislation could be applied in a more targeted manner to address the situations identified as resulting in unfair outcomes in favour of taxpayers.

The proposal to remove the capital reduction route for demergers before a statutory alternative has been trialled and tested in practice risks leaving genuine business separations without a workable method for a considerable period. We are not, therefore, in favour of this change. However, to the extent that this approach is to be implemented, we would recommend an appropriate transition period when the current rules remain available in parallel and, following the end of the transition period, that some form of temporary clearance service be put in place to enable taxpayers to achieve the necessary certainty of treatment.

We do not consider that the Consultation demonstrates the case for aligning the income tax treatment of non-UK resident company distributions with UK resident company distributions and are not in favour of this proposal. As currently drafted, we consider that the Consultation may inadvertently impact offshore funds, private fund structures, investment managers, and UK investors in overseas listed companies, impacting the competitiveness of the UK as a jurisdiction.

We are broadly supportive of the aim of removing genuine uncertainty around improper and inadvertent distributions, but we consider that the measures suggested by the Consultation are insufficiently targeted and risk stifling genuine business activity. We therefore recommend that these measures be further reviewed, with a view to a subsequent, more targeted, consultation.

We require further commentary and analysis on HMRC's concerns with the operation of the current transactions in securities rules before we can comment fully on whether those concerns, in our view, justify amendments to those rules. If these concerns can be made out, we suggest that a proper consultation concerning a reformulated TIS regime should replace the other measures proposed in the Consultation.

3. Responses to questions contained in the Consultation

Introduction

(1) **How do any of the proposals outlined in this document impact Corporation Tax payers?**

Although the Consultation states that the proposals are not intended to affect corporate shareholders directly, and that "the general exemption from tax under Part 9A Corporation Tax Act 2009 ("CTA 2009") should ensure this", we consider that corporation tax payers will nonetheless be affected in practice, in particular:

(A) The proposal to freeze capital on shares at the level of the original subscription (Chapter 2) could disturb routine intragroup reorganisations and cause additional complexity where shares are subsequently sold within a corporate group or acquired by third parties. For clarity, corporate groups routinely insert holding companies for commercial, regulatory, financing and governance purposes, not simply for tax reasons.

(B) The Consultation recognises that the proposal to modernise the rules determining the size of a distribution on a reduction of share capital or share buyback may cause issues where share for share exchanges take place within corporate groups or the substantial shareholdings exemption ("SSE") applies. The interaction between this proposal and the SSE is not clear; it is not apparent how the proposal is intended to apply where a holding company structure has been put in place for genuine commercial reasons rather than to facilitate shareholder extractions, and corporation tax payers within such groups may face additional compliance burdens in tracing frozen capital, even though they are not the intended target of the reform.

(C) The proposal to remove the capital reduction route used by corporate businesses to carry out non-statutory demergers, increasing reliance on the statutory route (Chapter 3) may impede business de-mergers, succession planning and shareholder exits. The Consultation's intention to "liberalise" the statutory route might not fully compensate for the loss of existing restructuring flexibility, and corporate groups may in the meantime face additional cost, delay and uncertainty in restructuring. Further, removing the right to appeal to the Tribunal should a clearance request be denied, on the basis that HMRC intends to relax conditions and clarify legislative ambiguity, is premature and could reduce certainty for corporate groups undertaking significant restructurings.

Reduction of Capital

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

We do not support the proposal to modernise the rules determining the size of a distribution on a reduction of share capital or share buyback. The proposed "frozen capital" approach, under which the new consideration treated as paid up in respect of shares in any future holding company would be fixed at the amount subscribed for the shares originally acquired, represents a fundamental and unjustified departure from the existing rules.

As stated above, the proposed rules could require taxpayers to obtain historic share capital information through a chain of ownership and/or corporate restructurings that may be difficult (or practically impossible) to locate. We do not consider the proposal to be proportionate to the mischief it is intended to address; to the extent HMRC has identified a narrow band of avoidance-motivated behaviour, this does not justify redesigning rules that work well for the overwhelming majority of taxpayers and transactions. Whilst the existing rules have their flaws, for example that a purchaser of shares does not have their purchase price treated as new consideration paid up in respect of the shares acquired with the consequence that a return of what was capital paid for the acquisition of those shares may partly be treated as income, they are at least well understood by taxpayers. We would also note a specific inconsistency with recent legislative policy: paragraph 47(1) of Schedule 2 to the Finance Act 2022 provides that a payment made by a Qualifying Asset Holding Company on a redemption, repayment or purchase of its own shares is not to be treated as a distribution for the purposes of the Corporation Tax Acts. That provision was a considered and comparatively recent decision to keep capital-form returns from qualifying holding structures outside the distributions regime. The Chapter 2 and Chapter 4 proposals would move in the opposite direction across a far wider range of taxpayers and structures, and we are concerned that reversing course so soon after the QAHC regime was introduced would be difficult to reconcile with the Government's stated aim of a stable and predictable UK tax system.

(3) **Please describe how this proposal might impact legitimate corporate demergers and share restructuring.**

This proposal would remove the capital reduction demerger route currently used by taxpayers to implement genuine, commercially-driven business separations where the statutory demerger regime is unavailable, for example because the distributing company lacks sufficient distributable reserves, because one or more group companies is non-UK/non-EU resident, because the group wishes to retain a stake in the demerged business, or because a post-demerger sale or change of control is contemplated.

Even with the proposed liberalisation of the statutory demerger rules (discussed in Chapter 3) we do not consider that the statutory route will be a workable substitute in all these scenarios. The proposal would also affect legitimate share-for-share reorganisations undertaken for reasons unconnected with tax planning, such as the interposition of a new holding company to satisfy lender requirements, to facilitate a joint venture, or ahead of a public takeover structured with share consideration.

In each case, shareholders and corporate groups could find capital which reflects a genuine commercial contribution of value effectively frozen at a historic, and potentially unknowable, subscription amount.

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

We anticipate several unintended and/or unwelcome consequences, including:

(A) Where a holding company subsequently sells shares in the original company to a third party at arm's length, the frozen capital would, on the Consultation's proposed default, remain frozen in the hands of the purchaser, which could lead to unfairness if that purchaser is later subject to UK tax on a share buyback notwithstanding having paid full market value for the shares;

(B) Increased complexity and disputes over historic capital tracing in listed groups, where shareholders acquire shares on-market at prices reflecting accumulated value and have no visibility of, or connection to, the original subscription price paid by early investors;

(C) Disproportionate impact on takeovers structured with share consideration, where target shareholders receiving new holding company shares would have their tax capital determined by reference to a subscription price they did not pay and had no ability to influence; and

(D) Reduced UK competitiveness at a time when the Government is otherwise seeking to encourage UK holding companies and listings. We would recommend that any reform include clear, legislated exemptions (not merely guidance) for third party arm's length sales, SSE transactions and other genuine commercial reorganisations, together with robust grandfathering for existing structures.

Demergers

(5) **In what scenarios would you currently undertake or recommend a non-statutory demerger?**

Non-statutory demergers are typically undertaken where a group wishes to achieve the same commercial outcome as a statutory demerger but cannot satisfy the statutory conditions. Common scenarios include:

(A) The distributing company has insufficient distributable reserves to pay a dividend in specie, making a direct or indirect statutory demerger unavailable as a matter of company law;

(B) One or more relevant companies is not UK or EU resident;

(C) The group wishes to separate investment from trading activities;

(D) The group wishes to retain a stake of more than a nominal amount in the demerged business;

(E) The group wishes to separate a sub-group in which it holds less than a 75% interest, such as a joint venture or portfolio holding; or

(F) A change of control, or an onward sale of the demerged business, is contemplated or cannot be ruled out within the relevant time horizon.

(6) **Do you think that the statutory demerger rules ought to apply to a broader scope of transactions?**

Given that non-statutory demergers are undertaken for the same commercial purposes as statutory demergers, we consider that the statutory demerger rules should be extended to apply to situations in which a capital reduction demerger is currently possible under section 136 TCGA 1992.

The proposed amendments address some, but not all, of these scenarios and we would therefore recommend that this should be reviewed and updated for consistency should the proposal come into effect.

(7) **What comments and suggestions do you have regarding the amendments suggested above to the statutory demerger legislation?**

Please see our comments in relation to the specific amendments proposed to the statutory demerger conditions:

(A) We do not object to the proposal that Condition A would be removed, with the effect that there would be no requirement for all companies to be resident in the UK or in an EU member state.

(B) We do not object to the proposal that Condition B would be updated to include investment companies (the majority of references to 'trade' in the statutory demergers legislation would be expanded to also include 'activity') – we would welcome this relaxation given the context in which we typically see non-statutory demergers used.

(C) We do not object to the proposal that Condition C would be removed from legislation due to redundancy.

(D) We do not object to the proposal that Condition G would be removed in order to legislate commonly accepted practice.

(E) We do not object to the proposal that Condition I would be relaxed and limited to 'immediately after the transaction', particularly as this proposal would helpfully amend the current ambiguity that arises as a result of the requirement being open-ended.

(F) We object to the proposal that Conditions E, H and J would be amended to the effect that ‘all or substantially all’ would be replaced by ‘all’, in order to provide clarity. Our objection is on the basis that groups often need to retain a modest stake in a demerged business for ordinary commercial reasons, and a strict “all” test would push more transactions towards the non-statutory route rather than fewer – the opposite of HMRC's stated aim.

(G) We do not object to the proposal that Condition K would be relaxed to allow the distributing company to be dissolved post distribution, provided that it contains no assets including cash or loans (the exemption from Condition K in cases whereby the distributing company is a 75% subsidiary of another company would be removed due to redundancy).

(H) We do not object to the proposal that Conditions L and M would be removed due to redundancy (as internal group distributions would be exempt in the hands of corporate shareholders under most circumstances).

(I) We object to the proposal to create easements within parts of Condition D to prevent over-reliance on non-statutory practices and to allow for better certainty for businesses in their long-term planning. We are concerned by the proposed 5-year restriction under Condition D on onward sales, changes of control and dissolution. The Consultation is not clear on whether this is an absolute bar for 5 years (which would make the regime unusable for most groups, particularly listed ones, since businesses cannot commit to forgo all commercial opportunities for half a decade) or simply a test of intention at the time of the demerger (much closer to the status quo, although we remain unclear on how HMRC would expect this intention to be evidenced). We would query the underlying policy rationale for treating an onward sale, which may be remote in time and not originally contemplated, as inconsistent with a genuine demerger. More generally, we would note that even once the proposed relaxations described above are taken into account, a statutory demerger is likely to remain considerably less flexible in practice than the non-statutory route it is intended to replace. As capital reduction demergers are often undertaken with a view to potentially preparing for a future sale, this is likely to mean a significant number of taxpayers are unable to achieve a tax efficient demerger due to the potential implications of a sale and the lack of flexibility the statutory regime would provide in this regard.

(J) We object to the proposal for the removal of the automatic right of appeal to the Tribunal where a clearance is refused. Liberalising the conditions is not, in itself, a reason to withdraw a taxpayer safeguard; if the changes genuinely reduce ambiguity, the practical need for appeals should reduce on its own, and the right of appeal should be retained for any remaining cases where clearance is not granted.

(8) **Are there any other specific parts of the legislation which you think the government should re-examine?**

We recommend a re-examination of the “chargeable payments” regime under Chapter 5 Part 23 CTA 2010. This five-year monitoring requirement in respect of any payment that might constitute a “chargeable payment” is difficult to apply with certainty, which means that corporate groups often expend significant time and cost on this exercise, and this requirement can also complicate third-party disposals. This compliance burden is a material factor that pushes decision-makers towards the non-statutory route; HMRC should consider whether the specific mischief targeted by the chargeable payments regime could instead be addressed through a modernised anti-avoidance framework, potentially allowing the chargeable payments regime to be abolished.

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

We would refer to our responses to Questions 6, 7 and 8 above, which address the ways in which we consider the demerger rules should be liberalised to account for the removal of capital demergers (although we are not convinced that the case for removal has been made out). In particular, we would suggest significantly shortening the proposed five-year window.

(10) **Do you anticipate any unintended consequences as a result of the proposals set out in this chapter?**

We do not identify further unintended consequences beyond those already flagged in our responses to Questions 3, 4 and 7 above, save to note that if the proposed liberalisation of the statutory demerger rules is implemented alongside, rather than instead of, the removal of the non-statutory capital reduction route in Chapter 2, there is a risk that transitional uncertainty (as businesses and advisers adjust to the new statutory conditions) coincides with the withdrawal of the existing non-statutory alternative, leaving some groups without a workable route to demerge for a period. We are therefore in favour of making the changes proposed to broaden access to the statutory demerger route as a first step, whilst retaining the other demerger routes that are currently available, so that a proper, evidence-based, assessment can be made (after a suitable transition period) as to whether the reformed statutory demerger route can in practice replace those other routes.

Income Tax treatment of distributions from non-UK resident companies

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

We do not support this proposal in its current form. The distinction between the income tax treatment of distributions from UK and non-UK resident companies is long-standing and reflects a deliberate policy choice that a charge on distributions from foreign companies should be confined to income, rather than capital, in nature (we note, for example, that this difference was discussed as part of the Tax Law Rewrite, with the existing approach being confirmed then). While we accept that this can produce a “distortion” in cases where UK resident individuals are able to structure or select between UK and non-UK vehicles specifically to obtain more favourable tax treatment, we do not consider that the Consultation has demonstrated that this is a widespread or significant problem, as opposed to an occasional by-product of a settled and otherwise coherent rule.

Wholesale alignment risks bringing genuine capital returns, arising for reasons unconnected with UK tax planning (for example, from investment fund structures, offshore holding vehicles used for regulatory or governance reasons, or historic group structures), within the charge to income tax.

Instead of moving forward with this aspect of the Consultation, we consider that the government must identify more precisely the specific behaviours and structures that are regarded as distortive before pursuing further reform in this area and, as part of this, should consider whether targeted or modernised anti-avoidance measures could address those specific concerns. Any such matters should be the subject of a targeted future consultation.

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

We anticipate this proposal could affect the availability of double tax relief. Where a distribution is currently taxed as a capital receipt in the UK but is subject to a dividend withholding tax or other tax in the source jurisdiction, recharacterising the receipt as an income tax distribution could, depending on the relevant double tax treaty and UK unilateral relief rules, alter or improve the availability of credit relief in some cases, while in others (for example, where foreign tax has been levied on a capital gain rather than income) could give rise to a mismatch and irrecoverable foreign tax. We understand that in the case of some non-UK jurisdictions, it is becoming harder to obtain double tax relief, and we are concerned that taxing capital receipts from non-UK companies as income will make this issue worse, leading to time consuming and costly MAP applications.

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

We anticipate this proposal could deter or complicate a number of commercial corporate actions, including:

(A) capital returns by offshore investment funds and holding structures to UK individual investors, which are commonly structured in capital form for reasons unconnected with the recipient's UK tax position and where reporting fund status under the UK's current offshore funds regime provides certainty of outcome for UK taxpayers;

(B) participation by UK individual investors in share buyback programmes conducted by non-UK listed companies, particularly where those buybacks are not structured as purchases by an investment bank acting as principal (as has become the practice in the UK listed markets);

(C) the use of non-UK holding structures for genuine regulatory, governance or financing reasons, which could become less attractive if a UK income tax charge on capital returns is introduced; and

(D) closed-ended private fund structures, typically structured as limited partnerships, which commonly return value realised on the disposal of a portfolio investment by way of a redemption of shares in an intermediate master holding company held beneath the fund. Where the underlying investment would, if sold directly by the limited partnership, give rise to a capital gain for its investors, taxing the equivalent return of value as income simply because it is routed through a redemption at the master holding company level would produce an inconsistent outcome for what is, in substance, the same economic event. We note that similar considerations may arise with "club" or co-investment structures taking the form of an offshore closed ended corporate vehicle that makes one or more capital investments, where the intention is for the capital proceeds arising on disposal of each investment to be returned via a redemption or repurchase of shares in the vehicle to preserve capital treatment.

We share the concerns raised at HMRC's stakeholder meeting on 1 July 2026 that tightening the UK rules in this area could reduce the UK's international competitiveness. Rather than a wholesale extension of the charge, we would suggest HMRC consider a more targeted approach, focused on cases where the choice of a non-UK vehicle is demonstrably tax motivated.

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

We anticipate practical difficulties in extending the charge to stock dividends issued by non-UK companies, given that the classification of an instrument as a "share" for these purposes depends on the company law of the jurisdiction of incorporation, which may differ materially from UK concepts.

It may be difficult to identify, in real time, when a non-UK company has issued the equivalent of a stock dividend, particularly for retail or minority shareholders in widely held or quoted companies who will not typically have visibility of the relevant corporate mechanics.

We would recommend that any extension of the charge be accompanied by clear guidance, and ideally a statutory safe harbour, addressing how UK shareholders should treat instruments issued under unfamiliar non-UK company law regimes.

(15) **Do you have any comments on extending the charge to redeemable bonus shares and securities?**

We have similar concerns to those expressed in our response to Question 14.

Taxing redeemable bonus shares and securities at the point of issue, with a further charge on redemption, already requires shareholders to identify two separate taxing events under UK company law concepts; extending this to non-UK resident companies compounds the identification difficulty where local company law does not use equivalent concepts.

We would support this extension only if accompanied by clear identification rules and guidance to assist affected shareholders, particularly minority and retail investors, in identifying when such instruments have been issued.

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

We would support extending the income tax charge to payments on special securities and non-commercial securities issued by non-UK resident companies only to the extent this is necessary to remove a genuine distortion or tax mischief, and not as a blanket extension.

As the Consultation notes, income tax is in many cases already charged on payments made on these instruments (for example as interest income), so the incremental effect of extending the distributions charge specifically should be assessed carefully to avoid double taxation or duplicative compliance obligations.

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

We are not aware of any such arrangements.

We have not responded to Questions 18 to 21, which relate to matters on which we do not have substantive comments.

Interaction between debt, loans and the distributions legislation

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

We are aware of situations where dividends or other distributions have subsequently been found to be improperly paid as a matter of company law, typically discovered some time after the event, for example during a due diligence exercise on a sale of the company (as illustrated in Annex G to the Consultation).

The circumstances are often highly fact-specific and depend on the particular company law issue involved (for example, insufficient distributable reserves at the time of payment, a procedural defect in the resolution authorising the distribution, or a payment made otherwise than strictly in accordance with the articles). In our experience, such improper distributions are almost never the result of deliberate tax planning; rather, they typically arise from inadvertent errors, often in smaller or owner-managed businesses where the technical company law requirements for a lawful distribution are not fully appreciated.

Where identified, resolution (whether by repayment, waiver, or restructuring of the relevant entitlement) can take anywhere from a matter of weeks to a year or more, depending on the complexity of unwinding the underlying transaction, and the tax treatment adopted on repayment varies considerably depending on the facts and the point at which the issue is identified relative to relevant enquiry windows.

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

A priority rule may well reduce the number of disputes over timing but may result in a number of issues. For example, it could risk putting the initial tax burden on the company that has suffered the improper extraction of value, and which may be trying to pursue the shareholder for repayment. The assumption that in a close company context there will not be difficulties in matching shareholder and company liabilities is a very dangerous one. Close companies may arise in structures that are economically widely held, particularly where they are owned or majority owned by partnerships, as is common in private equity owned structures.

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

We would not see legislating this practice as a substitute for other improvements but may be supportive of legislating the discretionary practice provided that the statutory conditions are not drawn more narrowly than the existing practice, and do not introduce new ambiguity that could reduce the availability of the relief in practice.

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

Allowing income tax already paid on an unlawful distribution to be set off against a liability arising on rectifying the position would avoid double taxation and would better reflect the underlying economic reality that value has only been extracted from the company once. As such, we would support this as a helpful and proportionate measure.

(26) **What alternative solutions might be implemented to address the issues raised in this chapter?**

We would encourage HMRC to consider a flexible mechanism, rather than a single rigid rule, given the wide variety of factual scenarios that can give rise to an improper distribution.

Loans and other temporary extractions from non-UK resident companies

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

We do not consider this would create material additional administrative difficulty in most cases. UK resident individuals receiving loans of this kind will typically already be within Self-Assessment, so collecting the charge through the individual's own tax return should be a relatively low-friction mechanism.

The main practical difficulty we anticipate is that individuals would need to establish whether the lending company would be a close company if it were UK resident, which may not always be straightforward, particularly for complex or multi-tiered non-UK ownership structures (and noting our earlier comment regarding private equity owned structures).

We would recommend clear transitional/grandfathering provisions for loans already outstanding at the time any new rules take effect.

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

We would encourage HMRC to use this opportunity to move towards a single, coherent regime that applies consistently to loans from both UK and non-UK resident close companies, rather than maintaining two parallel regimes with different mechanics and timing depending on the lender's residence.

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

Of the options contained within the Consultation, Option 3 is, in our view, the most appropriate. Taxing the loan only on release or write-off, rather than as it arises, avoids penalising arrangements that are genuinely short-term and are, in practice, repaid. In contrast, an upfront charge under Options 1 or 2 would impose a cash cost on ordinary commercial borrowing that happens to have a close company lender.

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

In our experience, the close company definition often catches structures where ownership is, in substance, widely held. For example, private equity and other fund structures in which the “five or fewer participators” control test can render a company close notwithstanding that it is ultimately owned by a large number of investors with no individual or collective ability to control the company in any ordinary commercial sense. Without a targeted carve-out, this proposal could bring genuinely arm’s length, minor co-investment interests (for example, a management or employee minority stake in a portfolio company held through a non-UK holding structure) within scope of a charge intended to target extractions of profit by controlling shareholders in owner-managed businesses.

(31) **What impacts would the proposal have on arm's length commercial lending?**

We cannot provide a detailed assessment of the impact on arm's length commercial lending but would note that any proposal should include a clear and workable exclusion for loans made on genuine arm's length commercial terms to avoid inadvertently capturing ordinary intra-group or investor financing arrangements.

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

We think this amendment would be of assistance in targeting the charge at loans which represent extractions of profit. A specific carve-out for partners in a partnership who are only associated by virtue of the partnership structure would similarly avoid catching an unnecessarily wide pool of individuals.

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

We would suggest three further refinements:

(A) first, an exclusion in relation to loans used to fund the acquisition of, or an increase in, an equity stake in the lender or a group company (on the basis that this is a common feature of management and employee ownership arrangements);

(B) second, an exclusion for loans made on genuinely commercial terms – for individuals, this could be tested by reference to the HMRC official rate of interest, and for companies, by reference to arm's length principles; and

(C) third, detailed worked examples in guidance so that businesses can apply these exclusions with confidence.

Purchase of Own Shares rules

(34) **What general comments do you have on the proposals set out in this chapter?**

We are generally supportive of replacing the subjective "benefit of the trade" test with objective, mechanical conditions as this may help to reduce the number of disputes that currently arise.

However, we would request further clarification regarding the underlying policy rationale for the proposed 5% ownership threshold, the extension of holding period requirements for family-related shareholders, and additional market value compliance obligations.

(35) **What unintended consequences do you anticipate as a result of these changes?**

The automatic extension to a 5-year holding and working period for family-connected shareholders could catch out entirely genuine retirement or succession exits that would have comfortably satisfied a 2-year test, without any real corresponding benefit in terms of preventing avoidance.

We would also note that if HMRC also wants the POS regime to be more useful in a wider set of circumstances, the current proposals do not remove the practical obstacles (the 5% minimum stake, the 2-year holding requirement, and the UK residence condition for nominees under section 1034(2) CTA 2010) that presently make the regime unworkable in many cases.

Further, to the extent the reformed TIS rules in Chapter 8 are calibrated by reference to the POS conditions, we would be concerned if POS effectively became the only route to capital treatment on a share disposal, since that would risk sweeping in transactions that fall outside the (deliberately narrow) POS conditions but are nonetheless entirely legitimate.

Updated capital extraction anti-avoidance

(36) **What general comments do you have on the proposal set out in this chapter?**

We agree anti-avoidance legislation needs to “keep pace” with how transactions are structured in practice. However, we consider that HMRC should first consider a modernised anti-avoidance rule aimed at a specific behaviour (for instance, a holding company being inserted purely to rebase capital with no real change in who owns or controls the business) before considering broader legislative changes. In our view, the most proportionate way to achieve this would be a clear, principles-based rule that sits alongside, and reinforces, the existing distinction between income and capital, rather than a wholesale replacement of the underlying framework for taxing returns of value. We would also encourage HMRC to explain more fully why a dedicated backstop of this kind remains necessary alongside the General Anti-Abuse Rule, the Disclosure of Tax Avoidance Schemes regime, and the courts' now well-established practice of construing tax legislation purposively. To the extent those existing safeguards already address the specific mischief HMRC has identified, a narrower, more targeted anti-avoidance rule (rather than a broad backstop) would in our view be the more proportionate response.

(37) **What unintended consequences do you anticipate as a result of this proposal?**

An anti-avoidance rule drawn too widely, or left too uncertain in its application, will end up catching routine transactions rather than addressing the tax mischief in question – demergers, capital returns by listed companies to a broad shareholder base, share-for-share takeovers, and new equity raised from third-party investors are all obvious candidates for being caught inadvertently. The rule needs to draw a clear line between the specific mischief (an intentional rebasing capital via a new holding company with no real change in ownership and with a view to returning amounts in capital form) and situations where new value is genuinely being contributed by existing or incoming investors on arm’s length terms.

4. <u>Concluding comments</u>

In addition to the responses set out above, we note the following by way of closing observations.

First, we understand that the reaction from those who attended HMRC's own stakeholder session on 1 July 2026 was strikingly negative, particularly on the restructuring proposals in Chapters 2 and 3 and on the Purchase of Own Shares proposals in Chapter 7, and that HMRC’s own representatives acknowledged they were relying on this engagement to fill gaps in their commercial understanding. We would encourage HMRC to treat that reaction as a genuine signal rather than something to be managed through the consultation process.

Second, taken together, we think several of these proposals cut against the grain of the Government’s separate efforts to make the UK a more attractive place to base holding companies and listed groups, including through initiatives such as the Qualifying Asset Holding Company regime; the Chapter 2 and Chapter 4 proposals in particular sit uneasily alongside that agenda.

Third, we would encourage HMRC not to proceed with the more far-reaching structural proposals in Chapters 2 and 4 until it has first considered whether the policy concern can be addressed through a modernised and appropriately targeted anti-avoidance rule under Chapter 8 that has been the subject of appropriate further consultation. In our view, that sequencing would provide a more proportionate means of addressing genuine avoidance while reducing the risk of unnecessary disruption to ordinary commercial transactions.

We would welcome the opportunity to discuss any aspect of this response.

5. **Contact details and next steps**

We would welcome the opportunity to further discuss any of the points raised in this response. If you wish to do so, please contact:

- Martin Shah, Partner (martin.shah@simmons-simmons.com)
- Helen Coward, Partner (helen.coward@simmons-simmons.com)
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Simmons & Simmons LLP

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