

CHAPTER 27

CLOSE COMPANY DEFINITION

27.1 Introduction

A close company is a company which is **resident in the UK** and is **controlled by either**

[CTA 2010, s.439](#)

- **five or fewer participators** (shareholders); or
- **any number of directors who are also shareholders.**

Consequently, in the UK, **most private companies are close.**

27.2 Directors

In this context a director is anyone who acts as a director by whatever name called (e.g. Chairman). In addition, we include any manager of the company, who, with their associates, owns 20% or more of the voting shares of the company.

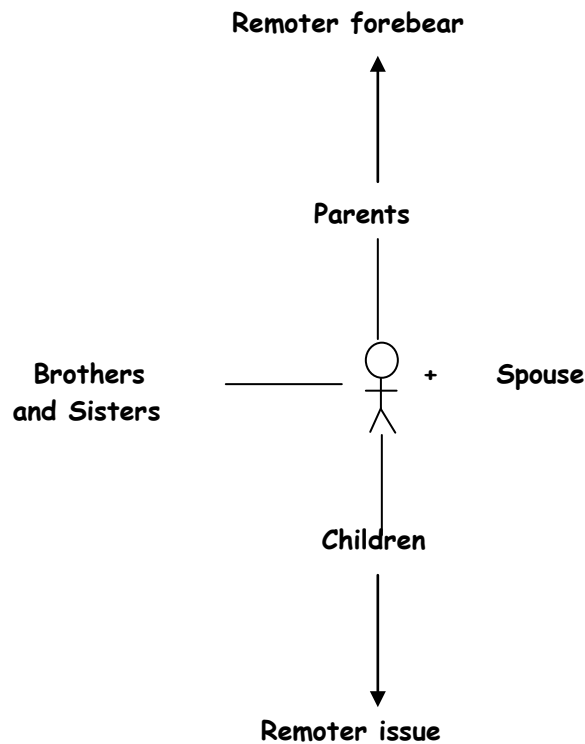
27.3 Associates

When **determining the level of ownership by one particular shareholder we must also include shares owned by his or her associates.** The rules for associates are very similar to those which apply in determining whether companies are associated with each other.

[CTA 2010, s.448](#)

For close company purposes associates include:

- the individual's immediate family,



- **business partners** (but not co-directors)
- **trustees of trusts** set up by the individual or any of his immediate family
- **nominees** (a nominee is simply an individual who owns shares on behalf of someone else).

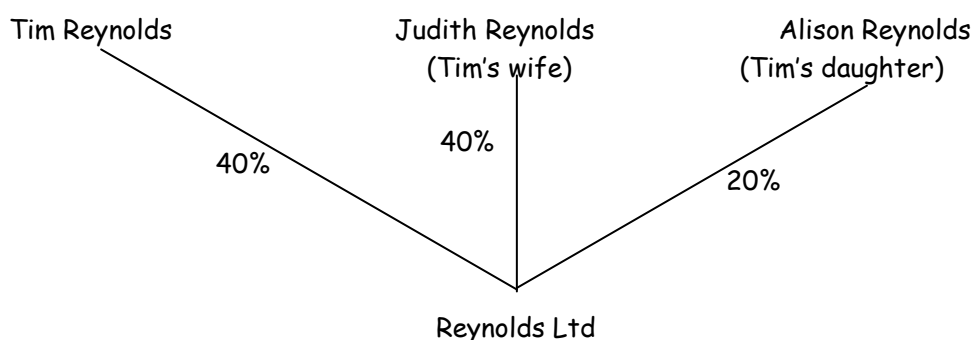
Example 1

Julie invites the following people round to dinner. Which of them are associated with her?

	Yes	No
Her sister		
Her sister's husband		
Her cousin		
Her uncle		
Her business partner		
Her grandmother		
Her investment adviser		

Example 2

Reynolds Ltd is owned as follows:



Is Reynolds Ltd a close company?

Example 3

Eastenders Ltd is owned as follows:

* Phil Mitchell	11%
* Pauline Fowler	11%
* Dorothy Cotton	11%
* Pat Evans	11%
* Terry Raymond	6%
Gary Hobbs	5%
Others - owning less than 5%	<u>45%</u>
	<u>100%</u>

* = Director

Is Eastenders Ltd a close company?

Does your answer change if Gary Hobbs is appointed a director?

Example 4

Trotters Independent Traders Ltd is owned as follows:

Derek Trotter	20%
Rodney Trotter (Derek's brother)	7%
Albert Trotter (Derek's uncle)	5%
Boycee	10%
Marlene (Boycee's wife)	3%
Trigger	6%
Cassandra (Rodney's girlfriend)	4%
Others (1% each)	<u>45%</u>
	<u>100%</u>

Is the company close?

Example 5

Bill and Ben are brothers



Are the companies close?

Are the companies associated for the purpose of determining the rates of tax payable?

27.4 Exceptions

[CTA 2010,
s.442-447](#)

Certain companies will not be close companies. These are:

- 1) non resident companies;
- 2) registered friendly or industrial societies, building societies and life assurance companies;
- 3) companies controlled on behalf of the crown;
- 4) companies controlled by open companies;
- 5) quoted companies with substantial public interest.

27.5 Quoted companies with substantial public interest

[CTA 2010,
s.446-447](#)

The exception applies to a company that is quoted on the stock exchange and has had dealing in its shares in the last twelve months.

In addition the public must hold at least 35% of the votes and the principal members must hold less than 85%.

The public is defined as including:

- Any non close company
- Open pension funds
- Shares held by persons other than principal members

Directors, their associates and companies they control, can never be included as members of the public.

The principal members are the five biggest shareholders who hold at least 5% of the voting power in the company. Where there is a tie to be the fifth biggest shareholder then we include 6 or whatever higher number of principal members is necessary.

[CTA 2010,
s.446\(3\)](#)

[CTA 2010,
s.447](#)

Example 6

Cuentame plc is a company listed on the stock exchange with dealings in the last twelve months the shares are held as follows:

Mercedes Alcantara	24
Antonio Alcantara (Mercedes's husband)	10
Ines Alcantara (Mercedes's daughter)	4
Eugenio (family priest)	3
Don Pablo (Antonio's boss)	7
Nieves Fernando	2
Barrio Ltd (open company)	25
Jubilacion (open pension fund)	13
Others all less than 3%	<u>12</u>
	<u>100</u>

Mercedes, Don Pablo and Nieves are directors of the company.

Is the company close?

Answer 1

	Yes	No
Her sister	✓	
Her sister's husband		✓
Her cousin		✓
Her uncle		✓
Her business partner	✓	
Her grandmother	✓	
Her investment adviser		✓

Answer 2

Reynolds Ltd is a close company as over half of the shares (in this case all of the shares) are owned by 5 or fewer participants.

Answer 3

The 5 "largest" shareholders are:

Phil	11%
Pauline	11%
Dot	11%
Pat	11%
Terry	<u>6%</u>
	<u>50%</u>

This is not control by five or fewer shareholders (not more than 50%) so the company is not close.

If Gary is appointed as a director, then 55% of the shares are owned by the directors. This is control by any number of director shareholders so the company would become close.

Answer 4

The top 5 shareholders in the company are as follows:

Derek (including Rodney)	27%
Boycee (including Marlene)	13%
Trigger	6%
Albert	5%
Cassandra	<u>4%</u>
	<u>55%</u>

This is control so the company is close.

Answer 5

Each of the companies is a close company because they are each controlled by just one person.

Bill and Ben are brothers and they each wholly own their own companies. Under **s.451 CTA 2010** we must apportion holdings between associates. Therefore we should apportion Ben's holding in Pot Ltd to Bill. That means that Bill controls both Flower Ltd and Pot Ltd.

We should also apportion Bill's holding in Flower Ltd to Ben, which also means that Ben controls both Flower Ltd and Pot Ltd. That would mean, therefore, in the absence of any special rules that those two companies would be associated with each other even though Bill and Ben's companies may have nothing to do with each other; they would simply be associated because they are controlled by fellow family members.

However, **ESC C9** which deals with associates for small companies rate purposes, will ignore the apportionment rules provided there is not substantial commercial interdependence between the two companies.

Putting this into the context of an example, assume that Flower Ltd makes furniture and Pot Ltd sells furniture. If Pot Ltd only sold furniture produced by Flower Ltd, and Flower Ltd only supplies furniture to Pot Limited, there would be commercial inter-dependence. Pot Ltd is totally dependent upon Flower Ltd for its supplies, and Flower Ltd is totally dependent on Pot Ltd for its market.

If, however, Flower Ltd only sold furniture to Pot Ltd but Pot Ltd bought furniture from many different suppliers, and was not dependent upon Flower Ltd, then there may not be commercial inter-dependence. It is not a straightforward test as the companies do not need to be dependant on each other in the same way or to the same extent. Ultimately it will depend on all the facts. HMRC will not just confine themselves to consideration of trading transactions, they will also look at the administration and directorship of the companies, the premises used and other arrangements entered into such as inter company loans.

Answer 6

Is the company controlled by the directors?

Mercedes	38
Don Pablo	7
Nieves	<u>2</u>
	<u>47%</u>

No

Is the company controlled by five or fewer shareholders?

Barrío Ltd	25
Mercedes	<u>38</u>
	<u>63%</u>

Yes

Is the company controlled by an open company?

No as Barrío Ltd only holds 25%

Is the company within the quoted company exception?

The public hold

Barrío Ltd	25
Jubilación	13
Eugenio	3
Others	<u>12</u>
	<u>53%</u>

The principal members hold

Barrío Ltd	25
Jubilación	13
Mercedes	38
Don Pablo	<u>7</u>
	<u>83%</u>

Conclusion: it is not a close company

Note: In calculating Mercedes' shareholding we include the shares of her husband and daughter for all tests.

Nieves cannot be a member of the public as she is a director even though she is not a principal member.

Eugenio is not a principal member as he holds less than 5%. However, he is a member of the public.