

Technical factsheet

Dividend in specie and distribution in specie in private companies

A guide to company law, reporting and tax issues providing a broad overview of issues in relation to dividends and distributions in specie

Distribution is usually the most common way of returning value to the shareholders, with cash dividends being the most frequent form. Although dividends are usually paid in cash, it is possible for a company to distribute non-cash assets.

Dividend in specie vs. distributions in specie in company law

Where a dividend is declared in cash, but satisfied by a transfer of assets, it is called 'dividend in specie'. This type of dividend falls under Article 34 of model articles for private companies limited by shares (see Schedule 1, [The Companies \(Model Articles\) Regulations 2008](#) (SI 2008/3229)).

A distribution in specie occurs where a company makes a distribution of an identified non-cash asset, without first declaring an amount in cash. Distributions in specie fall under [section 845](#) of Companies Act 2006 (CA 2006). Most commonly, such assets may be property or machinery or the benefit of a debt. A distribution in specie may also occur if an asset is transferred at below market value (for example, as part of an intra-group reorganisation), where the value of the transferred asset is subsidised partly or in full by the transferring company.

Both dividend in specie and distribution in specie must be made in accordance with [Part 23 of CA 2006](#).

Distributable reserves

The requirement of distributable reserves applies to both dividend in specie and distributions in specie in accordance with [section 845](#) and [section 846](#) of CA 2006, by reference to company's most recent annual accounts, per section 836(2) of CA 2006.

If a company's distributable reserves are NIL, no distribution is lawful.

However, as long as distributable reserves exceed NIL, under section 845 a company can transfer assets, on condition that it receives consideration equal to the book value or the asset.

If the consideration is less than book value, the shortfall must be covered by distributable profits.

Approval process

CA 2006 does not specify who shall declare dividends, including dividends in specie. The authority to declare a dividend in specie is likely to be defined in the articles, which should be checked to ensure that the company is authorised to pay all or part of a dividend by transferring non-cash assets of equivalent value. Such authority should cover both interim and final dividends. In the absence of express authority, per or similar to [article 34](#), the company must pay all dividends in cash ([Wood v Odessa Waterworks Company \(1889\) 42 Ch D 636](#)), or change the articles.

If articles allow payments of dividends in specie, they should also determine who has the authority to declare it. (There is no reference CA 2006 regarding this.) If the articles are silent on this point, dividends in specie could be declared by the directors, without the permission of shareholders.

The generally accepted practice, however, is that final dividend, including dividend in specie, is recommended by directors and declared by members, either at AGM or by way of written ordinary resolution. The value of the dividend declared by members cannot exceed the value recommended by the directors.

As the provisions in a company's articles only apply to dividends, shareholder approval is not required for a distribution in specie (except in limited circumstances – for example, where the transfer amounts to a substantial property transaction under [section 190](#) of CA 2006). A distribution in specie does not have to be declared.

ACCOUNTING TREATMENT

Timing

FRS 102 fails to make specific reference to dividends or distributions in specie. Distributions and dividends in specie are recognised in the accounts when payment becomes a legal obligation of the entity to pay or the right to receive it.

There is no legal obligation to pay interim dividends, even when they have been approved by the directors, as the board can revoke its earlier resolution to pay an interim dividend at any time up to the time of actual payment. Unless steps have been taken to establish a legally binding liability through a deed of an acknowledgement of the liability to pay, an interim dividend in specie should only be recognised when the asset is transferred.

Final dividend in specie is likely to meet the recognition criteria when it is declared.

Value of dividend/distribution in specie

A company making a lawful distribution in specie may consider making the distribution at a value, being:

- actual consideration to be paid in respect of the transfer (if any)
- [book value](#) of the asset (as recorded in the accounts of the company selling the asset or, where the asset is not stated in the accounts at any amount, zero) ([section 845\(4\)](#))
- market value of the asset.

If an asset is distributed for consideration equal to its book value, section 845 permits the transaction and treats it as a distribution of zero.

If an asset is transferred for a consideration of less than its book value, transaction is only allowed if distributable reserves before the transfer are sufficient to offset the net reduction in the reserves equal to the value of the asset transfer less the consideration received. For example, the distribution of an asset with a book value of £10k for which the company receives £8k is only allowed if the reserves before the transaction amounted to at least £2k.

In a situation where the asset is transferred at book value for no consideration, company reserves before the transfer have to be at least equal to the book value of the asset.

Where to report

For companies preparing statement of changes in equity, the amount of dividend or distribution in specie, will be shown in that statement.

TAX

Distributing company: corporation tax

If dividends or distributions in specie refer to an asset of value equal to the book value, no corporation tax consequences arise.

However, if the market value of the asset exceeds the book value of the asset transferred, the distributing company is liable for corporation tax on chargeable gains on the difference between the book value and market value. This does not apply if the asset is transferred to a group company at no gain or loss under [section 171](#) of TCGA 1992.

If the conditions are satisfied, rollover relief may be available to defer the tax liability.

Corporate recipients: corporation tax treatment

In most cases, distributions and dividends in specie are tax exempt.

Individual recipients: income tax treatment from 6 April 2016

Dividends in specie and distributions in specie, falling under CTA 2010 section 1000, are treated as income for the purposes of income tax. The amount charged to income tax is the market value of the asset.

From 6 April 2016, individual recipients are entitled to a tax-free annual allowance as below:

From 2016/17-2017/18	£5,000
From 2018/19-2022/23	£2,000
2023/24	£1,000
2024/25	£500

Dividend income in excess of the tax-free allowance is taxed at the following rates:

- 8.75% – basic rate taxpayers (7.5% until March 2022)
- 33.75% – higher rate taxpayers (32.5% until March 2022)
- 39.35% – additional rate taxpayers (38.1% until March 2022).

Some distributions do not fall within the definition of a distribution in section 1000 of the CTA 2010. This applies to, for example:

- capital distributions made in the course of winding up under [section 122](#) of the TCGA 1992
- distributions made on a repayment or reduction of a company's share capital

These distributions are treated as a part disposal of the underlying shares and are subject to CGT in accordance with general principles.

Stamp duty

Stamp duty may apply to distributions in specie, where the assets are stocks and shares, or land and buildings, transferred for a consideration.

Transfer of shares as dividend/distribution

The key matter to consider is that the decision to transfer the asset creates a debt of the company to shareholders. The following interpretations may be adopted:

- Interim dividend in specie – due to the non-binding nature of interim dividends, it is unlikely that the declaration of interim dividends or distributions in specie will create debt
- Final dividend in specie – it is possible to interpret that debt arises following the declaration of the dividend. It has been suggested that a resolution declaring a cash dividend to be satisfied by the transfer of a particular asset avoids the creation of a debt and that HMRC has in the past accepted this position
- Final cash dividend later settled by a transfer of asset – if the decision to settle by a transfer of an asset and the declaration of the dividend happen at the same time and constitute one event, it is possible to interpret the arrangement similar to a final dividend in specie for an asset consideration rather than cash consideration.

Where there is no consideration, NIL consideration should be reported on the stock transfer form, which may assist in reaffirming any of the above positions with regards to SDLT with HMRC.

A distribution of shares to a corporate shareholder may, if chargeable to stamp duty, qualify for group relief.

Land and buildings as dividend/distribution

[Section 54](#) of Finance Act 2003 and section 23 of Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (LTTA) provided an exception to the general rule – that, for stamp duty purposes, market value of the property is the deemed consideration, allowing dividends or distributions in specie, to be exempt from SDLT unless debt exists or is created.

SDLT is therefore chargeable only on a distribution or dividend in specie if the recipient assumes, satisfies or releases any debt related to the property, if debt is created. Similar consideration as those discussed above in relation to interim and final dividends apply to assess whether debt is created.

As in the case of an interim dividend, debt is not created; there is no question of chargeable consideration, even if the property is passed on with an attached mortgage. The distribution is exempt from SDLT and LTT.

Declaration of a final dividend in specie may create a debt that is satisfied by the land transfer. SDLT is chargeable on the amount of the debt satisfied by the land transfer or, if lower, the market value of the property. However, distributions of a mortgage property on winding up is exempt from stamp duty.

VAT

VAT provisions are complex and this guide provides only a general overview of the most common issues.

Generally, VAT is chargeable on the supply of goods and services for a consideration where there is a direct link between the consideration received and the goods or services provided.

Transfers for no consideration

The declaration of an interim dividend in specie or a final distribution in specie does not create a debt and is generally regarded as a transfer for no consideration.

However, where there is no consideration, paragraph 5(1) of Value Added Tax Act 1994 provides an exception to the rule that a supply must be for consideration, treating all transfers of assets out of business as a supply of goods.

As a result, distributions in specie of assets transferred will incur output tax, equal to the net amount for which the company could buy identical assets.

While the same would apply to property transfers, whether VAT is chargeable depends on the status of the supply – for example, transfer of a new residential property will incur 0% VAT, and transfer of an old commercial or residential property will be exempt.

Transfers for consideration

The existence of debt owed by the company to a shareholder prior to a transfer of an asset as a distribution in specie is likely to constitute consideration for the asset, where the transfer of the asset discharges company liability. VAT will apply.

February 2025

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