



Chartered Institute of Taxation
30 Monck Street
LONDON
SW1P 2AP

BAI - Specialist Policy Team
100 Parliament St
LONDON SW1A 2BQ

Phone 03000542561

Web www.gov.uk

Date 26 September 2024

Dear Sir or Madam

Thank you for your submission concerning HMRC's position on ordinary share capital for the purposes of s987 ITA 2007.

1. Relevance of *Warsaw*

- 1.1 You are correct that it is now HMRC's position that whether a dividend is cumulative or not has no bearing on whether a share carries a right to a dividend at a fixed rate.
- 1.2 This follows from the Upper Tribunal decision in *Warsaw*, and in particular on the basis of the judge's comments at paragraph 20, which you cite at paragraph 2.3 of your submission. Also relevant was the commentary at paragraph 38 that '*In our opinion, "rate" in this context describes the relationship between two variables or different units of measurement, expressed as a ratio.*'

2. Guidance

- 2.1 We are grateful to you for indicating that when we updated the guidance to reflect the comments in *Warsaw* we missed the example concerning payments that have to be approved by a regulator. We will update the guidance shortly to the following.

If you need extra support, for example if you have a disability, a mental health condition, or do not speak English/Welsh, go to www.gov.uk and search for 'get help from HMRC'.
Text Relay service prefix number – 18001

Description	Ordinary Share Capital	Comment
Fixed rate of 10% but dividend only paid on regulator authorisation	No	The rate and amount are both fixed in this situation and HMRC do not view the fact that the regulator can prevent payment as changing the analysis.

2.2 With regard to your detailed questions, the guidance is illustrative to help readers find the right answer, and the list is not exhaustive. Outside the bulk of clear cases, whether or not shares are ‘ordinary share capital’ can only be conclusively determined on the basis of the wording in the legislation. S987 ITA 2007 is clear that this includes *all* issued share capital, however described, except for the capital which only gives a right to a dividend at a fixed rate, but no other right to share in the company’s profits.

2.3 This test has two parts to it: that there is only right to a dividend at a fixed rate, and that there is no other right to share in the profits of the company. Whether the rights attached to shares meet this test will be a question of fact.

2.4 With regard to your particular query regarding ordinary shares, in practice it is more likely that preference shares with dividends at a fixed rate will not be ‘ordinary share capital.’ This is on the basis that ordinary shares tend to have a more complex set of rights attached which may give the holders other rights to share in the company’s profits. However, it is the rights attached to the share which are determinative, not the label under which the share capital is issued. As noted above, the starting point under s987 ITA 2007 is that all of a company’s issued share capital is ordinary share capital unless it meets particular conditions.

Yours faithfully

Caroline Bryson
Policy and Technical Advisor

Join the millions of taxpayers already using their Personal Tax Account to access a range of services. It takes just a few minutes to get started, go to www.gov.uk/personal-tax-account Or you can use the HMRC app.

To find out about the service and standard of behaviour you can expect from us, go to www.gov.uk and search 'HMRC Charter'.