



# Finance Act 1993

## 1993 CHAPTER 34

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

##### *Interest etc. on debts between associated companies*

#### **61 Qualifying debts for purposes of sections 63 to 66**

- (1) A debt is a qualifying debt for the purposes of sections 63 to 66 below at any time if, at that time—
  - (a) the person entitled to the debt is a company which is resident in the United Kingdom (“the resident company”);
  - (b) the person liable for the debt is either a qualifying company or a qualifying third party; and
  - (c) the debt is not an exempted debt for those purposes.
- (2) A company is a qualifying company for the purposes of this section and section 62 below at any time if, at that time, the company—
  - (a) is an associated company of the resident company, and
  - (b) is resident outside the United Kingdom.
- (3) For the purposes of subsection (2)(b) above, any company which, though resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements as resident in a territory outside the United Kingdom shall be treated as if it were resident outside the United Kingdom.
- (4) A third party, that is to say, a person who is not an associated company of the resident company, is a qualifying third party for the purposes of this section and section 62

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below at any time if, at that time, each of the two conditions mentioned below is fulfilled.

- (5) The first condition is that, in pursuance of any arrangements made with the third party, that party has at any earlier time been put in funds (directly or indirectly)—
  - (a) by the resident company or by a company which was at that earlier time an associated company of the resident company, or
  - (b) by a person from whom the resident company has (directly or indirectly) acquired the debt or by a company which was at that earlier time an associated company of that person.
- (6) The second condition is that, in pursuance of those arrangements, a company which is a qualifying company has at any earlier time been put in funds (directly or indirectly) by the third party or by a company which was at that earlier time an associated company of that party.
- (7) In this section—
 

“associated company” shall be construed in accordance with section 416 of the Taxes Act 1988;

“double taxation arrangements” means double taxation arrangements having effect by virtue of section 788 of that Act.

## **62 Exempted debts for those purposes**

- (1) A debt is an exempted debt for the purposes of sections 63 to 66 below at any time if each of the first, second and third conditions mentioned below—
  - (a) is fulfilled at that time;
  - (b) has been fulfilled throughout so much of the period of the debt as falls before that time; and
  - (c) is likely to be fulfilled throughout so much of that period as falls after that time.
- (2) The first condition is that the terms of the debt provide that any interest carried by it shall be at a rate which falls into one, and one only, of the following categories—
  - (a) a fixed rate which is the same throughout the period of the debt;
  - (b) a rate which bears to a standard published rate the same fixed relationship throughout that period; and
  - (c) a rate which bears to a published index of prices the same fixed relationship throughout that period.
- (3) The second condition is that those terms provide for any such interest to be payable as it accrues at intervals of 12 months or less.
- (4) The third condition is that those terms are such that—
  - (a) the amount payable on the debt’s redemption cannot exceed the amount of the consideration given for it, or
  - (b) the debt must be redeemed within 12 months of its creation.
- (5) For the purposes of subsection (4) above the amount payable on a debt’s redemption does not include any amount payable by way of interest.

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- (6) A debt is an exempted debt for the purposes of sections 63 to 66 below at any time if the inspector is satisfied that the fourth condition mentioned below is fulfilled and either—
- (a) he is also so satisfied with respect to the fifth condition so mentioned, or
  - (b) the sixth condition so mentioned is fulfilled.
- (7) The fourth condition is that the possibility of returns on the debt being chargeable to tax as they arise rather than as they accrue was not the main reason, or one of the main reasons, why the resident company created the debt on the qualifying terms, acquired the debt on those terms or (as the case may be) agreed to the subsequent inclusion of those terms.
- (8) The fifth condition is that, even if the person liable for the debt were none of the following, namely—
- (a) a qualifying company;
  - (b) a qualifying third party; and
  - (c) a person who would be such a company or party if paragraph (b) of section 61(2) above were omitted,
- the resident company would have still created the debt on the qualifying terms, acquired the debt on those terms or (as the case may be) agreed to the subsequent inclusion of those terms.
- (9) Where it is not the resident company's business to make loans generally, that fact shall be disregarded in applying subsection (8) above.
- (10) The sixth condition is that the terms of the debt—
- (a) are such that the debt must be redeemed before the end of the relevant period, or
  - (b) provide for any interest accruing during that period to be payable no later than immediately after the end of that period and for any interest subsequently accruing to be payable as it accrues at intervals of 12 months or less.
- (11) In subsection (10) above "the relevant period" means the period of 24 months beginning with the date when the resident company created the debt on the qualifying terms, acquired the debt on those terms or (as the case may be) agreed to the subsequent inclusion of those terms.
- (12) A debt is an exempted debt for the purposes of sections 63 to 66 below at any time if the inspector is satisfied that, at that time, the seventh condition mentioned below was fulfilled.
- (13) The seventh condition is that, by reason of its inability to pay its debts, the principal debtor—
- (a) has been, is in the course of being or is likely to be wound up, or
  - (b) has been or is likely to be dissolved,
- under or by virtue of the laws of the territory in which it is or was incorporated.
- (14) Any reference in subsection (13) above to the principal debtor having been or being likely to be dissolved includes a reference to its otherwise having ceased or being likely to cease to exist as a company.

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- (15) Where there is an appeal arising under subsection (6) or (12) above, that subsection shall be construed as if the reference to the inspector being satisfied were a reference to the Commissioners concerned being satisfied.
- (16) In this section—
- “the principal debtor” means the qualifying company liable for the debt or, as the case may be, the qualifying company mentioned in section 61(6) above;
  - “published index of prices” means the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom;
  - “qualifying terms”, in relation to a debt, means such of the terms of the debt as preclude it from being an exempted debt by virtue of subsection (1) above.

### **63 Accrued income securities**

- (1) Subsection (2) below applies where the debt on an accrued income security—
- (a) is a qualifying debt at the end of the day immediately preceding the commencement date;
  - (b) becomes such a debt on any day after that date;
  - (c) ceases to be such a debt on any such day; or
  - (d) is such a debt at the end of the last day of any accounting period of the resident company ending after that date;
- and in that subsection “the relevant day” means the day mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (2) For the purposes of sections 710 to 728 of the Taxes Act 1988 (accrued income scheme) the security—
- (a) except in a case falling within paragraph (b) of subsection (1) above, shall be treated as transferred by the resident company with accrued interest on the relevant day;
  - (b) in a case falling within that paragraph where the resident company was the holder of the security on the day immediately preceding the relevant day, shall be treated as transferred by that company with accrued interest on that preceding day; and
  - (c) in a case falling within paragraph (c) of that subsection where the security is not a variable interest rate security, shall cease to be treated as such a security as from the end of the relevant day;
- and, in relation to such a transfer, the settlement day is the day of the transfer (notwithstanding section 712).
- (3) Subsection (4) below applies where the debt on an accrued income security—
- (a) is a qualifying debt at the beginning of the commencement date;
  - (b) becomes such a debt on any day after that date;
  - (c) ceases to be such a debt on any such day; or
  - (d) is such a debt at the beginning of the first day of any accounting period of the resident company beginning after that date;
- and in that subsection “the relevant day” means the day mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (4) For the purposes of sections 710 to 728 the security—

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- (a) except in a case falling within paragraph (c) of subsection (3) above, shall be treated as transferred to the resident company with accrued interest on the relevant day;
  - (b) in a case falling within that paragraph where the resident company is the holder of the security on the day immediately following the relevant day, shall be treated as transferred to that company with accrued interest on that following day; and
  - (c) in a case falling within paragraph (a) or (b) of that subsection where the security is not a variable interest rate security, shall be treated as such a security as from the beginning of the relevant day;
- and, in relation to such a transfer, the settlement day is the day of the transfer (notwithstanding section 712).
- (5) Any income which, apart from this subsection, would be treated as arising on any day by virtue of subsection (1)(a) or (b) above shall be treated as not arising until whichever of the following is the earliest, namely—
    - (a) the earliest day on which, under the terms on which the security is issued, the resident company is entitled to require it to be redeemed;
    - (b) the day on which the security is redeemed; and
    - (c) the day (if any) on which it is transferred by the resident company.
  - (6) Subsection (7) below applies where, in the case of a debt which is not a debt on a security, the terms of the debt are such that, if it were such a debt, the security would be an accrued income security.
  - (7) For the purposes of this section and sections 710 to 728, at any time when the debt is a qualifying debt—
    - (a) an accrued income security incorporating the terms of the debt shall be deemed to be held by the resident company, and
    - (b) the debt shall be deemed to be a debt on that security.
  - (8) Subsections (9) and (10) below shall apply where an accrued income security (including one deemed to be held by virtue of subsection (7) above) is treated by virtue of subsection (1)(c) or (d) above as transferred on any day by the resident company.
  - (9) In subsection (10) below “straddling period” means a period which would (by virtue of section 711(3) and (4) and apart from subsection (10) below) be in relation to the security an interest period beginning on or before and ending after the day of the transfer.
  - (10) For the purposes of sections 710 to 728 a straddling period is not an interest period but—
    - (a) the period beginning with the day on which the straddling period begins and ending with the day of the transfer is an interest period; and
    - (b) the period beginning with the day immediately following the day of the transfer and ending with the day on which the straddling period ends is an interest period.
  - (11) In this section—
    - “accrued income security” has the same meaning as “security” has for the purposes of sections 710 to 728;
    - “variable interest rate security” means a security to which section 717 (variable interest rate) applies;

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and other expressions to which meanings are assigned for the purposes of those sections have the same meanings as in sections 710 to 728.

- (12) In this section and sections 64 and 65 below “the commencement date” means 1st April 1993.

## **64 Deep discount securities**

- (1) Subsection (2) below applies where the debt on a deep discount security—
- (a) is a qualifying debt at the end of the day immediately preceding the commencement date;
  - (b) becomes such a debt at any time after that date;
  - (c) ceases to be such a debt at any such time; or
  - (d) is such a debt at the end of the last day of any accounting period of the resident company ending after that date;
- and in that subsection “the relevant time” means the time mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (2) For the purposes of Schedule 4 to the Taxes Act 1988 (deep discount securities) the resident company shall be deemed—
- (a) except in a case falling within paragraph (b) of subsection (1) above, to dispose of the security at the relevant time; and
  - (b) in a case falling within that paragraph where that company was the holder of the security at a time immediately preceding the relevant time, to dispose of the security at that preceding time.
- (3) Subsection (4) below applies where the debt on a deep discount security—
- (a) is a qualifying debt at the beginning of the commencement date;
  - (b) becomes such a debt at any time after that date;
  - (c) ceases to be such a debt at any such time; or
  - (d) is such a debt at the beginning of the first day of any accounting period of the resident company beginning after that date;
- and in that subsection “the relevant time” means the time mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (4) For the purposes of Schedule 4 the resident company shall be deemed—
- (a) except in a case falling within paragraph (c) of subsection (3) above, to acquire the security at the relevant time; and
  - (b) in a case falling within that paragraph where that company is the holder of the security at a time immediately following the relevant time, to acquire the security at that following time.
- (5) Any income which, apart from this subsection, would be treated as arising at any time by virtue of subsection (1)(a) or (b) above shall be treated as not arising until whichever of the following is the earliest, namely—
- (a) the earliest time at which, under the terms on which the security is issued, the resident company is entitled to require it to be redeemed;
  - (b) the time at which the security is redeemed; and
  - (c) the time (if any) at which it is transferred by the resident company.

- (6) Subsection (7) below applies where, in the case of a debt which is not a debt on a security, the terms of the debt are such that, if it were such a debt, the security would be a deep discount security.
- (7) For the purposes of this section and Schedule 4, at any time when the debt is a qualifying debt—
- (a) a deep discount security incorporating the terms of the debt shall be deemed to be held by the resident company, and
  - (b) the debt shall be deemed to be a debt on that security.
- (8) In this section expressions to which meanings are assigned for the purposes of Schedule 4 have the same meanings as in that Schedule.

## **65 Deep gain securities**

- (1) Subsection (2) below applies where the debt on a deep gain security—
- (a) is a qualifying debt at the end of the day immediately preceding the commencement date;
  - (b) becomes such a debt on any day after that date;
  - (c) ceases to be such a debt on any such day; or
  - (d) is such a debt at the end of the last day of any accounting period of the resident company ending after that date;
- and in that subsection “the relevant day” means the day mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (2) For the purposes of Schedule 11 to the Finance Act 1989 (deep gain securities) the resident company shall be treated—
- (a) except in a case falling within paragraph (b) of subsection (1) above, as transferring the security on the relevant day;
  - (b) in a case falling within that paragraph where the resident company was the holder of the security on the day immediately preceding the relevant day, as transferring the security on that preceding day; and
  - (c) (in either case) as obtaining in respect of the transfer an amount equal to the market value of the security at the time of the transfer.
- (3) Subsection (4) below applies where the debt on a deep gain security—
- (a) is a qualifying debt at the beginning of the commencement date;
  - (b) becomes such a debt on any day after that date;
  - (c) ceases to be such a debt on any such day; or
  - (d) is such a debt at the beginning of the first day of any accounting period of the resident company beginning after that date;
- and in that subsection “the relevant day” means the day mentioned in whichever of paragraphs (a) to (d) above is applicable.
- (4) For the purposes of Schedule 11 the resident company shall be treated—
- (a) except in a case falling within paragraph (c) of subsection (3) above, as acquiring the security on the relevant day;
  - (b) in a case falling within that paragraph where the resident company is the holder of the security on the day immediately following the relevant day, as acquiring the security on that following day; and

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- (c) (in either case) as paying in respect of the acquisition an amount equal to the market value of the security at the time of the acquisition.
- (5) Any income which, apart from this subsection, would be treated as arising on any day by virtue of subsection (1)(a) or (b) above shall be treated as not arising until whichever of the following is the earliest, namely—
  - (a) the earliest day on which, under the terms on which the security is issued, the resident company is entitled to require it to be redeemed;
  - (b) the day on which the security is redeemed; and
  - (c) the day (if any) on which it is transferred by the resident company.
- (6) Subsection (7) below applies where, in the case of a debt which is not a debt on a security, the terms of the debt are such that, if it were such a debt, the security would be a deep gain security.
- (7) For the purposes of this section and Schedule 11, at any time when the debt is a qualifying debt—
  - (a) a deep gain security incorporating the terms of the debt shall be deemed to be held by the resident company, and
  - (b) the debt shall be deemed to be a debt on that security.
- (8) Any reference in this section to Schedule 11 is a reference to that Schedule as it would have effect if paragraphs 1(4)(c) and 22 (exclusion of qualifying indexed securities and special rules for such securities) were omitted; but no income accruing before the commencement date in respect of the debt on a qualifying indexed security shall be chargeable to tax by virtue of this section.
- (9) In this section expressions to which meanings are assigned for the purposes of Schedule 11 have the same meanings as in that Schedule.

## **66 Avoidance of double charging**

- (1) In any case where—
  - (a) by virtue of sections 63(2) and 65(2) above, a single security is treated as transferred both for the purposes of sections 710 to 728 of the Taxes Act 1988 and for the purposes of Schedule 11 to the Finance Act 1989; and
  - (b) the transfer for the purposes of that Schedule is one to which paragraph 5 of that Schedule applies,
 the resident company shall not be chargeable to tax in respect of any income treated as arising by virtue of the transfer for the purposes of sections 710 to 728.
- (2) In any case where, by virtue of sections 63(7) and 65(7) above, the same qualifying debt is deemed to be a debt on two separate securities, those securities shall be treated as a single security for the purposes of subsection (1) above.
- (3) In any case where, by virtue of subsection (7) of section 63, 64 or 65 above, a qualifying debt is deemed to be a debt on a security, any income which is chargeable to tax as income treated as arising to the resident company by virtue of that section shall not also be chargeable to tax as income actually arising.