

# **CORPORATION TAX ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5: Loan Relationships**

##### **Overview**

##### ***Chapter 13: European cross-border transfers of business***

##### **Overview**

1246. This Chapter gives the rules that apply for loan relationships in the case of cross-border transfers of business within the European Community which is carried in the United Kingdom.

##### ***Section 421: Introduction to Chapter***

1247. This section sets out the two conditions required for the Chapter to apply together with the claim requirement. It is based on paragraphs 12D(1) to (4), 12G(1) and (2), 12H(1) and 12J(1) of Schedule 9 to FA 1996.

1248. *Subsection (3)(c)* rewrites paragraph 12D(1)(d) – that the transferee is resident in the United Kingdom or within the corporation tax charge in section 11 of ICTA – as “within the charge to corporation tax” since the effect is the same.

##### ***Section 422: Transfer of loan relationship at notional carrying value***

1249. This section provides the rule that where either of the conditions in section 421 applies, credits and debits on loan relationships which are transferred as part of the business transfer are brought into account by both the transferor and transferee as if the loan relationships had been transferred at the carrying value in the accounts of the transferor. It is based on paragraph 12D(1), (2) and (6) of Schedule 9 to FA 1996.

1250. The definition of “notional carrying value” is taken from paragraph 12(2) of Schedule 9 to FA 1996.

##### ***Section 423: Transferor using fair value accounting***

1251. This section provides the rule to apply in place of section 422 where the transferor company uses fair value accounting. It is based on paragraph 12D(7) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

##### ***Section 424: Reorganisations involving loan relationships***

1252. This section provides for debits and credits to be brought into account as if the relevant loan relationships were disposed of at their carrying value where a reorganisation under sections 127 to 130 of TCGA arises as a result of a transfer of business within this Chapter. It is based on paragraph 12G(1), (2), (4) and (6) of Schedule 9 to FA 1996.

***Section 425: Original holder using fair value accounting***

1253. This section provides the rule to apply in place of the rule in section 424 where fair value accounting is used by the original holder. It is based on paragraph 12G(5) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

***Section 426: Tax avoidance etc***

1254. This section disapplies the Chapter if the transfer of business is not effected for genuine commercial reasons unless the Commissioners for HMRC are satisfied, following an application, that the Chapter should apply. It is based on paragraph 12F(1) and (2) of Schedule 9 to FA 1996.

1255. In *subsection (1)(a)* “bona fide commercial reasons” is rewritten as “genuine commercial reasons”.

***Section 427: Procedure on application for clearance***

1256. This section gives the rules that apply where a clearance application is made under section 426 to the Commissioners for HMRC. It is based on paragraph 12F(3) of Schedule 9 to FA 1996.

1257. Paragraph 12F(3) applies the rules in section 138(2) to (5) of TCGA which this and the following section write out in full.

***Section 428: Decision on application for clearance***

1258. This section gives the time limit within which HMRC must give a decision following a clearance application and procedures relating to appeals. It is based on paragraph 12F(3) of Schedule 9 to FA 1996.

***Section 429: Disapplication of Chapter where transparent entities involved***

1259. This section disapplies the Chapter under certain circumstances where transparent entities are involved in the transfer of business. It is based on paragraphs 12H(1) and (2) and 12J(1) of Schedule 9 to FA 1996.

1260. The last two words of paragraph 12H(2)(b) (“paragraph 12G does not apply in relation to it”) are not rewritten in *subsection (2)* because it is not considered that they add anything to paragraph (b). These words do not appear in paragraph 12H(2)(a) which states simply that “paragraph ... 12G [does] not apply to the transfer”.

***Section 430: Interpretation***

1261. This section defines company and company residence in a member State for the purposes of the Chapter. It is based on paragraph 12J of Schedule 9 to FA 1996.