

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Loan Relationships

Overview

Chapter 7: Group relief claims involving impaired or released consortium debts

Overview

1156. This Chapter provides rules to prevent both a claim to group relief surrendered by a consortium company and debits for impairment losses on loans made to the consortium company. The purpose of these rather complex provisions is to prevent a claim to “double relief”, ie in respect of both an impairment loss for the consortium member and a group relief claim surrendered by the consortium company. This situation would not arise in the case of companies within a group as a result of the rule in section 354 which disallows impairment losses if the debtor and creditor companies are connected.
1157. Paragraph 5ZA of Schedule 9 to FA 1996 applies paragraph 5A, on which this Chapter is based, in relation to a debit in respect of the release of a liability as it applies in relation to an impairment loss. In rewriting these paragraphs in this Chapter references to a debit on the release of a liability (referred to here as a “release debit”) have been inserted into the relevant sections.

Section 364: Introduction to Chapter

1158. This section sets out the general circumstances when the provisions of the Chapter will apply, what the Chapter does and, in *subsection (2)*, provides an important definition. It is based on paragraphs 5ZA and 5A(1) to (4) and (16) of Schedule 9 to FA 1996.

Section 365: Reduction of impairment loss debits where group relief claimed

1159. This section provides the basic rule: where group relief is surrendered to a consortium member (or a member’s group company) by the consortium company and there is an excess of impairment losses over credits arising on loans to the consortium company, those impairment losses are reduced by the group relief claimed. It is based on paragraphs 5ZA and 5A(5) to (7) and (19) of Schedule 9 to FA 1996.

Section 366: Effect where credit for release brought into account on amortised cost basis

1160. This section provides that where a consortium company brings in a credit on an amortised cost basis on the release of a liability by a consortium member and that member debits an equal amount, the debit is not taken into account under this Chapter. It is based in paragraph 5A(15) of Schedule 9 to FA 1996.

Section 367: Reduction of credits exceeding impairment losses

1161. This section provides that where credits on loan relationships between the consortium member (or group company) and the consortium company exceed debits on those loans, the credits are reduced by debits previously reduced under section 365. It is based on paragraph 5A(8) to (10) of Schedule 9 to FA 1996. The reduction compensates for the restrictions in an earlier period which would not have arisen had there not, in that period, been an excess of debits over credits.
1162. Paragraph 5A(8)(a) of Schedule 9 refers to related debt recovery credits brought into account “under paragraph 5 above”. This is an incorrect reference and was overlooked in the consequential amendments to FA 2004 which removed paragraph 5(1) to (2A) of Schedule 9. This has been rewritten as if referring to the amounts brought into account in computing the “relevant net debits” (see paragraph 5A(5)(b)), which is the obvious meaning.

Section 368: Reduction of claims where there are earlier net consortium debits

1163. This section provides that claims for group relief surrendered by the consortium company to a consortium member (or group company) are reduced by the excess of debits over credits on loans to the consortium company in preceding years. It is based on paragraph 5A(11) to (13) of Schedule 9 to FA 1996.

Section 369: Carry forward of claims where there are no net consortium debits

1164. This section applies where there is a claim for group relief by a consortium company (or group member) but no net debit in respect of debts with the consortium company. It is based on paragraph 5A(14) of Schedule 9 to FA 1996. In these circumstances the group relief claim is carried forward and treated as increasing a group relief claim for the subsequent accounting period for the purposes of section 365.

Section 370: Group accounting periods

1165. This section gives the meaning of “group accounting period” for the purposes of this Chapter. It is based on paragraph 5A(17) and (18) of Schedule 9 to FA 1996.

Section 371: Interpretation

1166. This section defines various terms used in this Chapter. It is based on paragraph 5A(2) to (5) and (19) to (21).