

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Relationships treated as loan relationships etc

Overview

1342. The overview for this Part is included in the overview for Part 5.

Chapter 1: Introduction

Section 477: Overview of Part

1343. This section outlines the structure of this Part. It is new.

Chapter 2: Relevant non-lending relationships

Overview

1344. This Chapter brings within the loan relationship provisions money debts which do not fall within the definition of a loan relationship in section 302 because they do not arise from a transaction for the lending of money. The Chapter is based on section 100 of FA 1996.

Section 478: Relevant non-lending relationships: introduction

1345. This section sets out the purpose of the Chapter and provides definitions. It is new.

Section 479: Relevant non-lending relationships not involving discounts

1346. This section deals with the first type of debt which is not a loan relationship because it does not arise from a transaction for the lending of money. It is based on section 100(1) of FA 1996.

1347. The debts within this type do not involve discounts and are debts on which interest, exchange movements or impairment losses arise.

Section 480: Relevant non-lending relationships involving discounts

1348. This section deals with the second type of debt which is not a loan relationship because it does not arise from a transaction for the lending of money. It is based on section 100(1A), (1B) and (3A) of FA 1996.

1349. This type of debt involves discounts, in particular the discount that arises where a sum due in respect of the sale of an asset is payable at a later date with the discount representing compensation for the late payment.

Section 481: Application of Part 5 to relevant non-lending relationships

1350. This section explains how the provisions of Part 5 are to be applied to the preceding sections on non-lending relationships. It is based on section 100(1), (2) to (2ZB) and (3A) of FA 1996.

Section 482: Miscellaneous rules about amounts to be brought into account because of this Chapter

1351. This section provides miscellaneous rules regarding non-lending relationships. It is based on section 100(3B) and (7) of FA 1996.

Section 483: Exchange gains and losses: amounts treated as money debts

1352. This section brings exchange gains and losses on currency holdings and liabilities into the loan relationships legislation by treating them as money debts owed to or by the company. It is based on section 100(10) to (12) of FA 1996.

Section 484: Provision not at arm's length: meaning of "interest" and "money debt"

1353. This section requires references to interest on money debts within this Chapter to include amounts treated as such under Schedule 28AA of ICTA (transfer pricing). It is based on section 100(3) of FA 1996.

Section 485: Exclusion of debts where profits or losses within Part 7 or 8

1354. This section excludes amounts from being brought into account under this Chapter if they are brought into account under the regimes for derivative contracts or intangible fixed assets. It is based on section 100(14) of FA 1996.

Section 486: Exclusion of exchange gains and losses in respect of tax debts etc

1355. This section precludes exchange gains and losses from being taken into account under this Chapter where they arise on certain tax payments or are on sums which are not deductible against trading profits or as management expenses. It is based on section 100(9) of FA 1996.

Chapter 3: OEICs, unit trusts and offshore funds

Overview

1356. This Chapter provides the rules for calculating debits and credits under Part 5 where a company holds an interest in an open-ended investment company (OEIC), unit trust scheme or offshore fund and the assets held by those entities are at least 60% "qualifying investments" by value. Qualifying investments are broadly assets that are or represent loan relationships. Such holdings are treated as rights under a creditor relationship.

Section 487: Overview of Chapter

1357. This section explains what the Chapter does. It is new.

Section 488: Meaning of "open-ended investment company" etc

1358. This section gives the definition of "open-ended investment company". It is based on paragraph 8(7A), (7B) and (7D) of Schedule 10 to FA 1996 and regulation 95(2) of the Authorised Investment Funds (Tax) Regulations 2006.
1359. The definition is by reference to sections 468A(2) to (4) of ICTA because the definition in section 468A(2), read with section 468A(3) and (4), is in substance the same as that

in paragraph 8(7A)(b), read with paragraph 8(7B) and (7D) of Schedule 10 to FA 1996 and any differences are negligible.

Section 489: Meaning of “offshore fund” etc

1360. This section gives a definition of “offshore fund” and also for “a material interest in such a fund” for this Chapter. It is based on paragraphs 7(1) and (2) and 8(7F) of Schedule 10 to FA 1996.
1361. The definition of “offshore fund” in paragraph 7 of Schedule 10 to FA 1996 has been applied throughout the Chapter. See *Change 60* in Annex 1.

Section 490: Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights

1362. This section provides the basic rule: if at any time in an accounting period an OEIC, unit trust scheme or offshore fund fails the qualifying investments test, a company’s holdings in such entities are treated as rights under a creditor relationship and the credits and debits are to be brought into account on the basis of fair value. It is based on paragraphs 4(1) to (4) and 7(1) of Schedule 10 to FA 1996, section 48B(5) of FA 2005 and regulation 95(2) of the [Authorised Investment Funds \(Tax\) Regulations 2006 \(SI 2006/964\)](#).
1363. *Subsection (1)(a)(i)* refers to ownership of “shares” in an open-ended investment company. Paragraph 4(1) of Schedule 10 to FA 1996, as modified by regulation 95 of the above regulations, refers to a company holding “rights” in an open-ended investment company. The term “shares” has been used in this section because regulation 93 of those Regulations provides that the modification made by regulation 95 is in relation to “shareholders” in authorised investment funds. Referring to shares in an open-ended investment company also aligns this section with section 587.
1364. In *subsection (5)*, the meaning of “interest distributions” is provided by regulation 18(3) of the [Authorised Investment Funds \(Tax\) Regulations 2006 \(SI 2006/964\)](#).

Section 491: Holding coming within section 490: opening valuations

1365. This section provides the opening valuation for holdings of a company in an OEIC, unit trust scheme or offshore fund when section 490 first applies. It is based on paragraphs 5(1) and 6 of Schedule 10 to FA 1996.
1366. The words “the value of that asset” in paragraph 6 of Schedule 10 to FA 1996 have been rewritten as the “value of the holding” since the words in paragraph 6 refer directly back to “valuation of the holding” in sub-paragraph (b) of that paragraph.

Section 492: Disregard of investments made and liabilities incurred with avoidance intention etc

1367. This section provides that in determining credits and debits to be brought into account by any company in respect of its holding (“the relevant holding”) under the deemed creditor relationship, there shall be left out of account amounts relating to any investment or liability of the collective investment scheme or fund where the investment was made or the liability was incurred, or any transaction (or series of transactions) relating to the investment or liability was entered into, with a “relevant avoidance intention”. It is based on paragraph 4(5) and (6) of Schedule 10 to FA 1996 and regulation 95(2) of the [Authorised Investment Funds \(Tax\) Regulations 2006](#).

Section 493: The qualifying investments test

1368. This section explains what is meant by the qualifying investment test and how “qualifying investment” is to be interpreted when applied to OEICs, unit trust schemes or offshore funds. It is based on paragraph 8(1), (5), (5A), (7A), and (7C) of Schedule 10

to FA 1996 and regulation 95(3) of the Authorised Investment Funds (Tax) Regulations 2006.

1369. *Subsection (2)(b)* explains the meaning of references to investments of OEICs for cases where under section 468A(3) of ICTA parts of umbrella companies are themselves regarded as separate OEICs. This involves rewriting the reference in paragraph 8(5A) of Schedule 10 to FA 1996 to “investments comprised in the scheme property of that company” with the changes made by paragraph 8(7B) to (7D) for such parts. Paragraph 8(7C)(a) converts these words to a reference to such of the investments of the umbrella company as form part of the separate pool in question. But for paragraph 8(7C)(a), paragraph 8(7C)(b) would operate on the reference in paragraph 8(5A) to scheme property in the case of such parts, but once paragraph 8(7C)(a) has applied, there are no references to scheme property on which paragraph 8(7C)(b) can operate and so it is otiose and has not been rewritten.

Section 494: Meaning of “qualifying investments”

1370. This section lists the investments which constitute “qualifying investments”. It is based on paragraph 8(2), (7) and (7E) of Schedule 10 to FA 1996, paragraph 1 of Schedule 2 to FA 2005 and regulation 95(3) of the Authorised Investment Funds (Tax) Regulations 2006.
1371. Paragraphs 1 and 9 of Schedule 2 to FA 2005 require the reference to “money placed at interest” in paragraph 8(2)(a) of Schedule 10 to FA 1996 to include a reference to arrangements falling within section 47, 48A, 49 or 49A of FA 2005 (rewritten in Chapter 6 of this Part). It does not include diminishing shared ownership arrangements under section 47A of FA 2005.
1372. The [Unit Trust Schemes and Offshore Funds \(Non-qualifying Investments Test\) Order, SI 2006/981](#) also added a new paragraph 8(2)(h) to the list of qualifying investments in Schedule 10 to FA 1996 to cover “alternative finance arrangements”. They are defined in paragraph 8(7I) of that Schedule by reference to section 46(1) of FA 2005 as arrangements within section 47, 47A, 48A, 49 or 49A of FA 2005.
1373. Therefore, diminishing shared ownership arrangements (section 47A of FA 2005) are included as qualifying investments. However, paragraph 8(2)(e) of Schedule 10 to FA 1996 provides that derivative contracts are only included where the underlying subject matter consists of investments within paragraph 8(2)(a) to (d) of that Schedule. Therefore derivative contracts that consist mainly of diminishing shared ownership arrangements (section 47A) are not included, and hence the exclusion of these arrangements under *subsection (1)(f)(i)*.
1374. The definition of “derivative contract” in paragraph 8(7E) of Schedule 10 to FA 1996 has not been rewritten. If a contract is treated as a derivative contract in Part 7 then it is also treated as a derivative contract for the purposes of this section because the definition of “derivative contract” in section 834(1) of ICTA (which refers to Schedule 26 to FA 2002 and is consequentially amended to refer to Part 7) applies for the purposes of the Corporation Tax Acts.

Section 495: Qualifying holdings

1375. This section explains what is meant by “qualifying holdings” in an OEIC, unit trust scheme or offshore fund within the qualifying investments list in the preceding section. It is based on paragraph 8(3), (3A), (4), (6) and (7C) of Schedule 10 to FA 1996.
1376. Paragraph 8(3)(b) of Schedule 10 to FA 1996 has been rewritten to make it clear that “the same accounting period” refers to the accounting period of the company holding the investment in the unit trust scheme etc and not the accounting period of the unit trust scheme etc.

1377. Paragraphs 8(6A) and (6B) of that Schedule have not been rewritten because they are considered unnecessary and add nothing to the operation of paragraph 8(6)(c). It does not matter for the purposes of paragraph 8(6)(c) whether the shares are of different denominations; all that matters is their value.

Section 496: Meaning of “hedging relationship”

1378. This section provides the meaning of “hedging relationship”. It is based on paragraph 8(7G) and (7H) of Schedule 10 to FA 1996.

Section 497: Power to change investments that are qualifying investments

1379. This section gives the Treasury power to amend this Chapter. It is based on paragraphs 8(8) and 9 of Schedule 10 to FA 1996.
1380. *Subsection (1)* includes a change that allows the Treasury to amend the descriptions of qualifying investments of an open-ended investment company. See *Change 61* in Annex 1.
1381. *Subsection (2)* allows orders to be made for such “incidental, supplemental, consequential and transitional provision and savings”. This is a standard formulation for this Act for the extra things that can be done under an order and regulation-making powers. It is not considered a change in the law.

Chapter 4: Building societies

Overview

1382. This Chapter brings payments in respect of shares in building societies into the loan relationship regime. It provides that dividends and interest payable in respect of shares in, or deposits with, or loans to, a building society should be treated as a liability arising under a loan relationship of the building society.

Section 498: Building society dividends and interest

1383. This section brings dividends and interest payable by building societies into the loan relationship regime so far as they would not otherwise be within it. It is based on section 477A(3), (4), (9) and (10) of ICTA. The corresponding provision for income tax is section 372 of ITTOIA.

Chapter 5: Industrial and provident societies

Overview

1384. This Chapter brings payments in respect of shares in industrial and provident societies and agricultural or fishing co-operatives into the loan relationship regime. It does not treat the shares themselves as a loan relationship other than to allow dividends etc on shares held for the purposes of a trade to be treated as trading income.

Section 499: Industrial and provident society payments treated as interest under loan relationship

1385. This section treats certain payments by an industrial and provident society and agricultural or fishing co-operatives as payments of interest on a loan relationship. It is based on section 486(1), (4), (9) and (12) of ICTA. The corresponding provision for income tax is section 379 of ITTOIA.
1386. *Subsection (2)* treats dividends, bonuses and other sums payable on shareholdings held for the purposes of a trade or for other purposes as if that shareholding were a loan relationship so held. See *Change 62* in Annex 1.

Section 500: Exclusion of interest where failure to make return

1387. This section disallows a debit for interest paid by industrial and provident societies where returns under section 887 of ITA are not made within the specified period. Section 887 requires such companies to make returns of interest paid without deduction of tax. It is based on section 486(1), (7) and (12) of ICTA.

Chapter 6: Alternative finance arrangements

Overview

1388. This Chapter treats arrangements that comply with Shari'a law as falling within the loan relationships regime. Shari'a law prohibits transactions that involve interest, and arrangements for the borrowing or lending of money will usually involve some form of risk sharing instead. The rules are not limited to Shari'a compliant products but also apply to any finance arrangement that falls within their terms. In this Chapter these arrangements are known as "alternative finance arrangements".
1389. The rules covering alternative finance arrangements do not change the nature of the finance arrangements, nor do they in any way impute interest, or deem interest to arise where there is none. What they do is bring certain types of finance arrangements and the returns from those arrangements, into the same tax rules as those that apply to interest, providing a level playing field for tax between certain types of economically equivalent, but differently structured, finance arrangements.
1390. The Chapter sets out the nature of the five types of alternative finance arrangements in sections 503 to 507. Sections 509 to 513 explain which elements of the arrangements are treated as if they were loan relationships.
1391. Sections 48(1), 48B(4), 51, 51A and 56(3) of FA 2005 are not relevant for corporation tax purposes and therefore have not been rewritten in this Act. They remain in FA 2005 for non-corporation tax purposes.

Section 501: Introduction to Chapter

1392. This section provides an introduction to the Chapter by explaining what it does and provides definitions for the Chapter. It is based on paragraph 8(7I) of Schedule 10 to FA 1996 and section 46(1) of FA 2005 and is new in part.

Section 502: Meaning of "financial institution"

1393. This section gives the meaning of "financial institution". It is based on section 46(2) and (3) of FA 2005.

Section 503: Purchase and resale arrangements

1394. This section deals with the first type of alternative finance arrangement, whereby an asset is purchased by a financial institution and then sold to another person with the payment by that second person left on credit. It is based on section 47(1) to (3) of FA 2005. The price paid by that second person exceeds the price paid by the financial institution. The difference between the two prices equates to the return from an investment at interest and is treated as an alternative finance return (see section 511).

Section 504: Diminishing shared ownership arrangements

1395. This section deals with a second type of alternative finance arrangement. It is based on section 47A(1) to (4) of FA 2005. Two persons, at least one of them a financial institution, acquire an interest in an asset. The financial institution receives payments from the other party for that party's use of the financial institution's share as well as (usually leasing) payments, with the ownership of the asset passing by degrees to the other party. The other party in the arrangement has full use of the asset being acquired

and may grant rights in the asset. Payments made by the other party in excess of the payments for the beneficial interest being acquired are treated as an alternative finance return.

Section 505: Deposit arrangements

1396. This section deals with a third type of alternative finance arrangement whereby deposits are made with a financial institution and payments are made to the depositor out of profits earned by the use of the money. It is based on section 49(1) of FA 2005. The payments must equate to a return from an investment at interest. The return is treated as an alternative finance return.

Section 506: Profit share agency arrangements

1397. This section deals with a fourth type of alternative finance arrangement. It is based on section 49A(1) of FA 2005. Here the investor appoints an agent to whom a sum of money is given to be invested at a specified return. Any additional sum above that specified return is retained by the agent as an incentive fee.

Section 507: Investment bond arrangements

1398. This section deals with a fifth type of alternative finance arrangement and sets out the conditions that must be present for arrangements to be treated as an investment bond arrangement. It is based on section 48A(1) and (2) of FA 2005. Investment bond arrangements are a new variety of alternative finance arrangement that share some characteristics of a bond.
1399. An investment bond arrangement exists where the “bond-issuer” uses the subscription proceeds to acquire assets, which are specified in the arrangement, and are held for the benefit of the “bond-holder”. Income generated from the assets is distributed to the bond-holder and, on maturity of the bond, the assets are sold under pre-existing arrangements and the proceeds returned to the bond-holder.

Section 508: Provision not at arm’s length: exclusion of arrangements from sections 503 to 507

1400. This section excludes arrangements from sections 503 to 507 where the parties are connected persons within the transfer pricing legislation in Schedule 28AA of ICTA, the arrangements are not at arm’s length and the recipient of the alternative finance return is not subject to income or corporation tax or a similar non-United Kingdom tax. It is based on section 52(1) to (3) of FA 2005.
1401. In *subsection (2)(c)(ii)* “an amount representing relevant return” covers back to back arrangements where there is an intermediary between the two parties to the arrangements.

Section 509: Application of Part 5: general

1402. This section applies Part 5 to the five kinds of alternative finance arrangements. It is based on section 50(1) to (3) of FA 2005.

Section 510: Application of Part 5 to particular alternative finance arrangements

1403. This section provides, for each of the five alternative finance arrangements, the rules for what is to be treated as interest under that deemed loan relationship. It also provides some definitions for terms used in this section. It is based on section 50(1) to (2A) and (4) of FA 2005 and paragraph 7 of Schedule 2 to that Act.

Section 511: Purchase and resale arrangements

1404. This section explains the meaning of “alternative finance return” in relation to the purchase and resale arrangements in section 503. It is based on section 47(4), (6), (7) and (8) of FA 2005. It provides for where the second purchase price is paid either immediately or in instalments.

Section 512: Diminishing shared ownership arrangements

1405. This section explains the meaning of “alternative finance return” in relation to the diminishing shared ownership arrangements in section 504. It is based on section 47A(5) of FA 2005.
1406. “Costs and expenses” in section 47A(5) has been reduced to “expenses” in *subsection (3)* to avoid tautology.

Section 513: Other arrangements

1407. This section explains the meaning of “alternative finance return” in relation to deposit arrangements, profit share agency arrangements and investment bond arrangements. It is based on sections 48B(1), 49(2) and 49A(2) of FA 2005.
1408. In FA 2005 the return on some alternative investment arrangements is called “alternative finance return”, but the return on deposit arrangements and profit share agency arrangements is called “profit share return”. However, there is no material difference in the returns on these arrangements to justify different terminology. So “profit share return” has been replaced with “alternative finance return” in relation to deposit arrangements (section 505) and profit share agency arrangements (section 506). These are then consistent with purchase and resale arrangements, diminishing shared ownership arrangements and investment bond arrangements.
1409. Chapter 5 of Part 2 of FA 2005 is being amended to remove the term “profit share return” for income tax purposes.

Section 514: Exclusion of alternative finance return from consideration for sale of assets

1410. This section excludes the profits dealt with as interest under a loan relationship in relation to the arrangements under sections 503, 504 and 507 from determining the sale or purchase price for other tax purposes (eg trading or capital gains). It is based on section 53(1) to (3) of FA 2005. It does not prevent other tax provisions applying which substitute a different sum for a sale or purchase amount.

Section 515: Diminishing shared ownership arrangements not partnerships

1411. This section provides that diminishing shared ownership arrangements are not treated as a partnership for the purposes of the Corporation Tax Acts. It is based on section 47A(6) of FA 2005.

Section 516: Treatment of principal under profit sharing agency arrangements

1412. This section ensures that in the case of profit sharing arrangements the deposit-taker is taxable in respect of all of the profit resulting from the use of the money – both the depositor’s share of profit made under the arrangements and also the amount that the deposit-taker can retain. It is based on section 49A(3) of FA 2005. The deposit-taker is entitled to relief for the depositor’s share of profit.

Section 517: Treatment of bond-holder under investment bond arrangements

1413. This section provides that whatever the documentation accompanying investment bond arrangements may say, for tax purposes the bond-holder is not treated as having a legal

or beneficial interest in the assets, and so is not entitled to capital allowances, nor is the bond-issuer treated as a trustee, or as making payments in a fiduciary or representative capacity. It is based on section 48B(2) of FA 2005.

Section 518: Investment bond arrangements: treatment as securities

1414. This section provides that alternative finance investment bonds are securities for the purposes of the Corporation Tax Acts. It is based on section 48B(3) of FA 2005.

Section 519: Investment bond arrangements: other provisions

1415. This section provides the rules about how investment bond arrangements impact on the regimes for securitisation companies, close companies and group relief. It is based on section 48B(6) to (8) of FA 2005.

Section 520: Provision not at arm's length: non-deductibility of relevant return

1416. This section prevents any deduction in calculating profits for corporation tax purposes as a result of alternative finance arrangements where the arm's length rule in section 508 applies. It is based on section 52(4) and (5) of FA 2005.

Section 521: Power to extend this Chapter to other arrangements

1417. This section provides the Treasury with powers to introduce further arrangements into this Chapter and make consequential amendments to the Tax Acts as necessary. It is based on section 98 of FA 2006.

Chapter 7: Shares with guaranteed returns etc

Overview

1418. The rules in this Chapter counter avoidance through the use of shares which function in a similar way to loan relationships but which fall outside the definition. The schemes making use of these shares exploit the fact that increases in value and gains from the disposal of shares are subject only to the rules for corporation tax on chargeable gains, if at all. The schemes use derivatives in conjunction with shares, or deferred subscription agreements to create what is in form a share but in economic substance a deposit or loan. In most of them the risks associated with equity investments, as well as the rewards, are removed or significantly reduced, leaving the share giving a return, either by the payment of "dividends" or by a wholly predictable increase in value, which is the type of return expected from debt.

Section 522: Introduction to Chapter

1419. This section sets out what the Chapter does, how it is arranged and some useful cross-references. It is based on sections 91A(1), (10) and (11), 91B(1), (7) and (8), 91C(7), 91D(13) and 91E(4) of FA 1996.
1420. *Subsection (6)* provides that the full definition of "share" in section 476 does not apply for the purposes of this Chapter. The part of the definition that does apply to this Chapter is that the meaning of "share" does not include a share in a building society.

Section 523: Application of Part 5 to certain shares as rights under creditor relationship

1421. This section treats rights in shares as loan relationships and distributions from such shares as debits or credits under this Part where either section 524 or 526 applies. It is based on sections 91A(1), (2) and (2A) and 91B(1), (2), (2A) and (6A) of FA 1996.

Section 524: Shares subject to outstanding third party obligations

1422. This section deals with the first type of shares to fall within section 523: shares which increase in value in a similar way to an investment return as a result of an obligation by a third party. It is based on section 91A(1) and (5) to (6) of FA 1996.

Section 525: Meaning of “interest-like investment”

1423. This section explains a term used in the previous section. It is based on section 91A(7) to (9) of FA 1996.

Section 526: Non-qualifying shares

1424. This section deals with the second type of shares to fall within section 523: shares (“non-qualifying shares”) which produce predictable gains because of the nature of the assets underlying them. It is based on section 91B(1) and (6) of FA 1996. One of three conditions, dealt with in sections 527 and 529 to 532, must be met for shares to fall within this category.

Section 527: The increasing value condition

1425. This section gives the first of the conditions necessary for a share to be a non-qualifying share within section 526. It is based on section 91C(1) to (3) and (6) of FA 1996. This is where the assets of the company in which the shares are held increase at a rate similar to commercial interest but which are not income-producing.

Section 528: Regulations about income-producing assets

1426. This section gives powers to the Treasury to add to the list of income-producing assets in section 527. It is based on section 91C(4) and (5) of FA 1996.

Section 529: The redemption return condition

1427. This section gives the second of the conditions necessary for a share to be a non-qualifying share within section 526. It is based on section 91D(1) to (2A) of FA 1996. This is where a redeemable share (with certain exceptions) produces a return similar to commercial interest.

Section 530: The redemption return condition: excepted shares

1428. This section explains which redeemable shares are excluded from being shares which may meet the condition dealt with by section 529. It is based on section 91D(3) to (8) and (11) of FA 1996.
1429. “Independent person” in section 91D has been rewritten in this section as “persons not connected with the company” which is the definition in section 91D(11). Given that the definition in section 839 of ICTA applies, “persons” here refers to both companies and individuals. Section 839 is not separately referred to in this Part as the definition of “connected persons” in section 1316 applies for the purposes of the Act. The use of “independent person” appears twice in Chapter 2 of Part 4 of FA 1996 with two quite different definitions. The other definition is in section 103 of FA 1996. The use of both terms has been replaced by their definitions.

Section 531: The redemption return condition: unallowable purposes

1430. This section explains what is meant by an unallowable purpose to ascertain whether a share is a qualifying publicly issued share for the purposes of section 530 and thus excluded from the redemption return condition as an excepted share. It is based on section 91D(9) to (11) of FA 1996.

Section 532: The associated transactions condition

1431. This section gives the third and final condition necessary for a share to be a non-qualifying share within section 526. It is based on section 91E(1) to (3) of FA 1996. This is where neither of the other conditions is met but there is a scheme or arrangement under which the combined effect of the shares and another transaction produce a return similar to a commercial rate of interest.

Section 533: Power to change conditions for non-qualifying shares

1432. This section gives the Treasury the power to vary the conditions to be met under which shares may be “non-qualifying shares” for the purposes of section 526. It is based on section 91F of FA 1996.

Section 534: Amounts to be brought into account where section 523 applies

1433. This section sets out rules concerning the amounts to be brought into account for the purposes of this Part by the company holding the shares. It is based on section 91A(3), (4) and (9) and section 91B(3), (4) and (6A) of FA 1996.
1434. *Subsection (7)* overrides the requirement for amortised cost basis where both this section and section 349 apply. See *Change 57* in Annex 1.

Section 535: Shares ceasing to be shares to which section 523 applies

1435. This section treats shares which cease to fall within section 523 as having been disposed of and reacquired. It is based on section 91G(2) of FA 1996.

Chapter 8: Returns from partnerships

Overview

1436. This Chapter deals with arrangements involving firms that are intended to give rise to interest-like returns. It brings into the loan relationship provisions those arrangements that function in a similar way to loan relationships but which fall outside the definition. It is based on sections 91H and 91I of FA 1996 (inserted by paragraph 17 of Schedule 22 to FA 2008).

Section 536: Introduction to Chapter

1437. This section sets out what the Chapter does and how it is arranged. It is based on sections 91H(1), (2) and (6), and 91I(1), (2) and (7) of FA 1996.

Section 537: Payments in return for capital contribution to partnership

1438. This section deals with arrangements under which a company obtains a return by acquiring an interest in a firm for an amount which will increase in value in a similar way to interest. It is based on section 91H(1) to (4) of FA 1996.
1439. In accordance with the Partnership Act 1890, in this Act reference to the relationship between the partners is a “partnership”, but the collection of partners is a “firm”.

Section 538: Change of partnership shares

1440. This section deals with arrangements under which a company invests money in a firm in the form of capital contributions, initially receiving a share of the firm’s profits that is smaller than would be received by reference to that contribution but with a compensating greater entitlement to capital of the firm later on. It is based on section 91I(1) to (5) of FA 1996.

Chapter 9: Manufactured interest etc

Overview

1441. This Chapter treats “manufactured interest” (payments representing interest under a stock-lending arrangement) as interest under a loan relationship.

Section 539: Introduction to Chapter

1442. This section explains when a company has a “manufactured interest relationship”. It is based on section 97(1) and (4) of FA 1996.

Section 540: Manufactured interest treated as interest under loan relationship

1443. This section provides the main rule that the manufactured interest is treated as if it were interest under a loan relationship and the manufactured interest relationship is treated as if it were a loan relationship. It is based on section 97(2), (2A) and (4B) of FA 1996. It also ensures that debits and credits in respect of related transactions can still be taken into account after the company no longer has the right to receive manufactured interest (to prevent the sale of rights to receive such interest to third parties).

Section 541: Debits for deemed interest under stock lending arrangements disallowed

1444. This section disallows a debit under the loan relationship provisions for representative payments under section 736B(2) of ICTA. It is based on section 97(4A) of FA 1996.

Chapter 10: Repos

Overview

1445. The rules in this Chapter provide for the tax treatment of repo transactions to follow their accounting treatment under generally accepted accounting practice (GAAP). These rules have been rewritten from Schedule 13 to FA 2007.

Section 542: Introduction to Chapter

1446. This section sets out the purpose of the Chapter and how it is arranged. It is based on paragraph 1(1) of Schedule 13 to FA 2007.
1447. The purpose of the Chapter is that arrangements involving the sale and subsequent purchase of securities that equate in substance to the lending of money by or to a company (with the securities in substance acting as collateral) are to be taxed in accordance with their economic substance and accounting treatment.

Section 543: Meaning of creditor repo

1448. This section provides the definition of creditor repo - that is, a repo from the point of view of the lender, the company that purchases the securities as collateral. It is based on paragraph 7 of Schedule 13 to FA 2007.
1449. The securities are purchased with cash that, although legally a purchase price, equates in substance to a loan. Commercially this is known as a “reverse repo”. It is intended to cover normal repos executed under standard market documentation (although since it does not require the lender to sell the securities back to “the borrower” it goes wider than this).

Section 544: Meaning of creditor quasi-repo

1450. This section provides the definition of creditor quasi-repo. It is based on paragraph 8 of Schedule 13 to FA 2007. A creditor quasi-repo is intended to cover arrangements that are economically equivalent to standard creditor repos but are on non-standard terms.

Section 545: Ignoring effect on lender etc of sale of securities

1451. This section contains the first of two operative rules that apply when a company (“the lender”) has a creditor repo or creditor quasi-repo. It is based on paragraph 9 of Schedule 13 to FA 2007.
1452. The rule is intended to secure that the lender is not taxed on any income that arises on the securities during the period of the repo and does not obtain tax relief for any manufactured payments made, so long as neither is recognised in determining the lender’s profit or loss. This rule reflects the fact that for accounts purposes neither the income nor the payment will generally be recognised.

Section 546: Charge on lender for finance return in respect of the advance

1453. This section contains the second operative rule for creditor repos and creditor quasi-repos. It is based on paragraph 10 of Schedule 13 to FA 2007. It treats the financial asset as a loan relationship and the finance charge reflected in the accounts as deemed interest on that loan.

Section 547: Repo under arrangement designed to produce quasi-interest: tax avoidance

1454. This section is an anti-avoidance provision. It is based on paragraph 12 of Schedule 13 to FA 2007.

Section 548: Meaning of debtor repo

1455. This section introduces the concept of “debtor repo” – that is, a repo from the point of view of the borrower, the company that sells securities as collateral. It is based on paragraph 2 of Schedule 13 to FA 2007. It is intended to cover normal repos executed under standard market documentation (although since it does not require the borrower to buy the securities back from “the lender” it goes slightly wider than this).

Section 549: Meaning of debtor quasi-repo

1456. This section is the counterpart of section 544 and introduces the concept of “debtor quasi-repo” which is intended to cover arrangements that are economically equivalent to standard debtor repos but are on non-standard terms. It is based on paragraph 3 of Schedule 13 to FA 2007.

Section 550: Ignoring effect on borrower of sale of securities

1457. This section contains the first of two operative rules that apply when a company (“the borrower”) has a debtor repo or debtor quasi-repo. It is based on paragraph 4 of Schedule 13 to FA 2007. It also contains a special rule that applies where a person has entered into a “relevant arrangement”.
1458. It provides for the sale of securities by a company and the manufactured payment made by the other company in respect of the securities to be ignored. The borrower is taxed on the interest (or dividends) from the securities the borrower is selling and any manufactured interest the borrower receives representing that income is ignored.

Section 551: Relief for borrower for finance charges in respect of the advance

1459. This section sets out the second operative rule for debtor repos and debtor quasi-repos which is that the borrower obtains relief for any finance charge shown in its accounts that represents its cost of borrowing. It is based on paragraph 5 of Schedule 13 to FA 2007.

Section 552: General provisions about arrangements

1460. This section provides a number of rules for the purpose of applying other sections in this Chapter. It is based on paragraph 14(5) to (7) of Schedule 13 to FA 2007.

Section 553: Persons buying or selling for others

1461. This section ensures that where the sale or purchase of securities is made by a person for the benefit of another, the rules operate by reference to beneficial ownership. It is based on paragraph 14(3) of Schedule 13 to FA 2007.

Section 554: Power to modify this Chapter

1462. This section contains a power to modify some of the provisions of the Chapter to deal with non-standard repos or cases involving redemption arrangements. It is based on paragraph 15(1), (6), (7) and (9) of Schedule 13 to FA 2007.

Section 555: Cases where section 554 applies: non-standard repos

1463. This section sets out the situations when the powers under section 554 may be used. It is based on paragraph 15(2) to (5) of Schedule 13 to FA 2007.

Section 556: Meaning of securities and similar securities

1464. This section explains the meaning of “securities” for the other sections. It is based on paragraph 14 of Schedule 13 to FA 2007.

Section 557: Meaning of person receiving an asset

1465. This section provides that receiving an asset or payments in respect of an asset includes obtaining the value of, or a benefit from, an asset, whether directly or indirectly. It is based on paragraph 14(2) of Schedule 13 to FA 2007.

Section 558: Interpretation of accounting expressions

1466. This section explains accounting expressions used in the Chapter. It is based on paragraph 14(9) and (11) of Schedule 13 to FA 2007.

Section 559: Minor definitions

1467. This section provides further definitions for expressions used in this Chapter. It is based on paragraph 14(1) of Schedule 13 to FA 2007.

Chapter 11: Investment life insurance contracts

Overview

1468. This Chapter contains provisions that treat investment life insurance contracts as falling within the loan relationship rules. It is based on Schedule 13 to FA 2008.

Section 560: Introduction to Chapter

1469. This section sets out the purpose of the Chapter, how it is arranged and provides definitions for the Chapter. It is based on paragraph 1(1) and (2) of Schedule 13 to FA 2008.

Section 561: Meaning of “investment life insurance contract”

1470. This section defines “investment life insurance contract”, and also states the types of policies that are excluded from that definition. It is based on paragraph 1(1) to (3) of Schedule 13 to FA 2008.

Section 562: Contract to be loan relationship

1471. This section treats the investment life insurance contract as a creditor relationship of the company for the loan relationship provisions. It is based on paragraph 2(1) and (2) of Schedule 13 to FA 2008.
1472. *Subsections (3) and (4)* provide that credits representing the excess of any lump sum payout on death, or the onset of critical illness, over the policy’s surrender value at that time are exempt from tax under the loan relationship rules.

Section 563: Increased non-trading credits for BLAGAB and EEA taxed contracts

1473. This section provides a special rule within the loan relationships legislation for company-held investment policies. It is based on paragraphs 3(1) to (3) and 4(1) of Schedule 13 to FA 2008.
1474. The rule applies where the contract is a BLAGAB contract or is subject to a comparable “EEA tax charge”. In general, such policies will simply follow the normal rules, but this section recognises that in many cases the insurance company will have borne tax on the income and gains which are building up within the company in order to provide the benefits under the policy.
1475. This section provides that where a company has to bring in a non-trading credit representing a profit from a related transaction, then that credit is increased and the amount of the increase is set off against corporation tax assessable on the company for the accounting period.

Section 564: Section 563: interpretation

1476. This section provides the meaning of “BLAGAB contract” and provides the conditions for when a relevant comparable EEA tax charge has applied. It is based on paragraph 3(4) to (6) of Schedule 13 to FA 2008.

Section 565: Relevant amount where the relevant company uses fair value accounting

1477. This section provides a special rule where the policy is accounted for on the basis of fair value accounting. It is based on paragraphs 3(3) and 4(1) to (4) of Schedule 13 to FA 2008.
1478. The rule ensures that the whole profit, and not just the credit calculated by reference to the opening fair value at the start of the accounting period of sale etc, is used in calculating the additional credit and giving relief for the whole of the relevant I minus E tax.

Section 566: Introduction

1479. This section introduces the following three sections that deal with the charges on future gains of investment life insurance contracts that existed immediately before the

beginning of the first accounting period of the company beginning on or after 1 April 2008. It is based on paragraphs 6(1), 7(1) and 8(1) of Schedule 13 to FA 2008.

1480. Although these sections are transitional, they have been placed in the body of this Part, rather than in the Schedules, because those contracts will be the majority for some time.
1481. The part of paragraph 6(1) providing that there was a deemed surrender of the rights under the contract immediately before 1 April 2008 is spent and has not been rewritten.

Section 567: Gains on deemed surrenders to be brought into account on related transactions

1482. This section provides that gains that accrued as a result of that deemed surrender are brought into account in the accounting period in which there is a related transaction. It is based on paragraphs 6(2) to (4) of Schedule 13 to FA 2008.
1483. The deemed gain that is brought into account is apportioned where the company is still party to the contract after the related transaction.

Section 568: Restriction on credits on old contracts: fair value accounting cases

1484. This section applies where the company uses fair value accounting and the cost of the contract at the start of the first accounting period beginning on or after 1 April 2008 is greater than the fair value of that contract at that time. It is based on paragraph 7(1) to (3) of Schedule 13 to FA 2008.
1485. Subsequent credits are not brought into account until they exceed the amount by which cost exceeded fair value at the start of that period.

Section 569: Restriction on debits on old contracts: non-fair value accounting cases

1486. This section applies where the company does not use fair value accounting and the carrying value of the contract at the start of the first accounting period beginning on or after 1 April 2008 is greater than the fair value of that contract at that time. It is based on paragraph 8(1) and (2) of Schedule 13 to FA 2008.
1487. Subsequent debits are not brought into account until they exceed the amount by which that carrying value exceeded that fair value.
1488. This rule prevents amounts being brought into account where the drop in value of the policy occurred before the start of the initial period.