



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XI

CLOSE COMPANIES

CHAPTER II

CHARGES TO TAX IN CONNECTION WITH LOANS

Modifications etc. (not altering text)

C1 See 1989 s.107 and Sch.12—close companies: administrative provisions.

419 Loans to participators etc.

- (1) ^{M1}Subject to the following provisions of this section and section 420, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to [^{F1}25 per cent. of the amount of the loan or advance].

In relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, this subsection shall have effect with the substitution for “assessed on and recoverable” of “due”.

- (2) ^{M2}For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—
- that person incurs a debt to the close company; or
 - a debt due from that person to a third party is assigned to the close company;

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and then the close company shall be regarded as making a loan of an amount equal to the debt.

[^{F2}(3) Tax due by virtue of this section in relation to any loan or advance shall be due and payable [^{F3}in accordance with section 59D of the Management Act] on the day following the expiry of nine months from the end of the accounting period in which the loan or advance was made.]

(4) ^{M3}Where a close company has made a loan or advance which gave rise to a charge to tax on the company under subsection (1) above and

[^{F4}(a) the loan or advance or any part of it is repaid to the company, [^{F5}or

(b) the whole or part of the debt in respect of the loan or advance is released or written off,]

relief shall be given from that tax, or a proportionate part of it ^{F6}. . . .

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the financial year in which the repayment is made [^{F7}or the release or writing off occurs].

[^{F8}(4A) Where

[the repayment of the whole or any part of a loan or advance occurs on or after
^{F9}(a) the day on which tax by virtue of this section becomes due in relation to that loan or advance, [^{F10} or

(b) the release or writing off of the whole or any part of the debt in respect of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance,]

relief in respect of the repayment [^{F11}, release or writing off] shall not be given under subsection (4) above at any time before the expiry of nine months from the end of the accounting period in which the repayment [^{F11}, release or writing off] occurred.]

[^{F12}(4B) Schedule 1A to the Taxes Management Act 1970 (claims and elections not included in return) applies to a claim for relief under subsection (4) above unless—

(a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and

(b) the relief may be given at the time the claim is made.]

(5) ^{M4}Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—

(a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and

(b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to him.

(6) In subsections (1) and (5)(b) above the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity ^{F13}. . . .

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(7) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

Subordinate Legislation Made

P1 S. 419(1)(3): 30.9.1993 appointed for the purposes of s. 419(1)(3) by S.I. 1992/3066, **art. 2(2)(b)**

Textual Amendments

- F1** Words in s. 419(1) substituted (with effect in accordance with Sch. 3 para. 24(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(2)**
- F2** S. 419(3) substituted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(2)**
- F3** Words in s. 419(3) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(2)**; S.I. 1998/3173, **art. 2**
- F4** Word in s. 419(4) renumbered as s. 419(4)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(a)**
- F5** S. 419(4)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(b)**
- F6** Words in s. 419(4) repealed (with effect in accordance with s. 117(4)(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 19 para 47(3), **Sch. 27 Pt. 3(28)**, Note; S.I. 1998/3173, **art. 2**
- F7** Words in s. 419(4) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(c)**
- F8** S. 419(4A) inserted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(3)**
- F9** Word in s. 419(4A) renumbered as s. 419(4A)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(a)**
- F10** S. 419(4A)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(b)**
- F11** Words in s. 419(4A) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(c)**
- F12** S. 419(4B) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(4)**; S.I. 1998/3173, **art. 2**
- F13** Words in s. 419(6) repealed (with effect in accordance with s. 173(6) of the repealing Act) by Finance Act 1996 (c. 8), s. 173(4), **Sch. 41 Pt. 5(29)**, Note

Modifications etc. (not altering text)

C2 See 1970(M) s.109—*application of s.419 to corporation tax enactments generally.*

Marginal Citations

- M1** Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)
- M2** Source—1970 s.286(2)
- M3** Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44
- M4** Source—1970 s.286(7)-(9)

420 Exceptions from section 419.

- (1) ^{M5}Section 419(2)(a) shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

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- (2) ^{M6}Section 419(1) shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—
- (a) neither the amount of the loan, nor that amount when taken together with any other outstanding loans which—
 - (i) were made by the close company or any of its associated companies to the borrower *or the wife or husband of the borrower*^{F14}; and
 - (ii) if made before 31st March 1971, were made for the purpose of purchasing a dwelling which was or was to be the borrower's only or main residence;
 exceeds £15,000 and the outstanding loans falling within sub-paragraph (ii) above do not together exceed £10,000; and
 - (b) the borrower works full-time for the close company or any of its associated companies; and
 - (c) the borrower does not have a material interest in the close company or in any associated company of the close company;

but if the borrower acquires such a material interest at a time when the whole or part of any such loan made after 30th March 1971 remains outstanding the close company shall be regarded as making to him at that time a loan of an amount equal to the sum outstanding.

Section 168(11) shall apply for the purpose of determining whether a person has, for the purpose of this subsection, a material interest in a company, but with the omission of the words following “417(3)”.

Textual Amendments

F14 Words omitted where the loan first mentioned in s. 420(2) is made on or after 6 April 1990—see 1988(F) s. 35 and Sch. 3 para. 16.

Marginal Citations

M5 Source—1970 s.286(2)

M6 Source—1970 s.286(3), (9); 1971 s.25(5); 1972 Sch.17 3(3)

421 Taxation of borrower when loan under section 419 released etc

- (1) Subject to the following provisions of this section, where a company is assessed or liable to be assessed under section 419 in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, then—
- (a) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to the amount so released or written off shall be treated as income received by him after deduction of income tax [^{F15}at the [^{F16}Schedule F ordinary rate]] from a corresponding gross amount;
 - (b) no repayment of income tax shall be made in respect of that income and [^{F17}he shall not be liable to pay] income tax at the [^{F16}Schedule F ordinary rate] on that income;
 - (c) the income included by virtue of paragraph (a) above in his total income [^{F18}shall be treated [^{F19}(without prejudice to paragraph (b) above) as if it were income to which section 1A applies [^{F20}by virtue of subsection (2)(b) of that section] but][^{F21}, notwithstanding the preceding provisions of this subsection],

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- shall be treated] for the purposes of sections 348 and 349(1) as not brought into charge to income tax;
- (d) for the purpose of determining whether any or what amount of tax is, by virtue of paragraph (a) above, to be taken into account as having been deducted from a gross amount in the case of an individual whose total income is reduced by any deductions so much only of that gross amount shall be taken into account as is part of his total income as so reduced.
- (2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative, within the meaning of Part XVI, the amount treated as received by him shall accordingly be included for the purposes of that Part in the aggregate income of the estate) and subsection (1) above shall apply accordingly with the necessary modifications.
- (3) ^{M7}This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 677, except so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (6) of that section).
- (4) This section shall be construed as one with section 419.

Textual Amendments

- F15** Words in s. 421(1)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 77(4)(a)(5)
- F16** Words in s. 421(1)(a)(b) substituted (with effect in accordance with Sch. 4 para. 11(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 11(1)(a)
- F17** Words in s. 421(1)(b) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), s. 122(6)
- F18** Words in s. 421(1)(c) substituted (16.7.1992 with effect as mentioned in s. 19(7)) by Finance (No. 2) Act 1992 (c. 48), s. 19(6)(7)
- F19** Words in s. 421(1)(c) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 9
- F20** Words in s. 421(1)(c) inserted (with effect in accordance with 4 para. 11(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 11(1)(b)
- F21** Words in s. 421(1)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 77(4)(c)(5)

Marginal Citations

- M7** Source—1970 s.287(3), (4)

422 Extension of section 419 to loans by companies controlled by close companies.

- (1) Subject to subsection (4) below, where a company which is controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419, that section and section 420 shall apply as if the loan had been made by the close company.

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- (2) ^{M8}Subject to subsection (4) below, where a company which is not controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419 and a close company subsequently acquires control of it, that section and section 420 shall apply as if the loan had been made by the close company immediately after the time when it acquired control.
- (3) Where two or more close companies together control the company that makes or has made the loan, subsections (1) and (2) above shall have effect—
- (a) as if each of them controlled that company; and
 - (b) as if the loan had been made by each of those close companies,
- but the loan shall be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in the company that makes or has made the loan.
- (4) Subsections (1) and (2) above do not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by him) as a result of which there is a connection—
- (a) between the making of the loan and the acquisition of control; or
 - (b) between the making of the loan and the provision by the close company of funds for the company making the loan;
- and the close company shall be regarded as providing funds for the company making the loan if it directly or indirectly makes any payment or transfers any property to, or releases or satisfies (in whole or in part) a liability of, the company making the loan.
- (5) Where, by virtue of this section, sections 419 and 420 have effect as if a loan made by one company had been made by another, any question under those sections or section 421 whether—
- (a) the company making the loan did so otherwise than in the ordinary course of a business carried on by it which includes the lending of money;
 - (b) the loan or any part of it has been repaid to the company;
 - (c) the company has released or written off the whole or part of the debt in respect of the loan,
- shall be determined by reference to the company that makes the loan.
- (6) This section shall be construed as one with section 419 and section 420 and in this section—
- (a) “loan” includes advance; and
 - (b) references to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan by virtue of section 419(2).

Marginal Citations

M8 Source—1970 s.287A 1976 s.44(2)

Status:

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