



Finance Act 2002

2002 CHAPTER 23

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

OTHER PROVISIONS

Miscellaneous

102 Distributions: reasonable commercial return for use of principal secured

- (1) In section 209 of the Taxes Act 1988 (meaning of “distribution”) after subsection (3A) insert—

“(3AA) If, in the case of any security issued by a company, the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security—

- (a) the amount of the principal so secured shall be treated for the purposes of paragraph (d) of subsection (2) above as increased to the amount of the new consideration so received; and
- (b) subsection (3A) above, so far as relating to that paragraph, shall not have effect in relation to the security;

but this subsection is subject to sections 209A and 209B.”.

- (2) After that section insert—

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“209A Section 209(3AA): link to shares of company or associated company

- (1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the “issuing company”) if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—
- (a) the issuing company; or
 - (b) an associated company of the issuing company;
- but this subsection is subject to the following provisions of this section.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—
- (a) the issuing company is a bank or securities house;
 - (b) the security is issued by the issuing company in the ordinary course of its business; and
 - (c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.
- (3) In subsection (2)(c) above “qualifying index” means an index whose underlying subject matter includes both—
- (a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and
 - (b) shares in one or more companies falling within neither of those paragraphs,
- and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.
- (4) In this section—
- “bank” has the meaning given by section 840A;
- “securities house” means any person—
- (a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and
 - (b) whose business consists wholly or mainly of dealing in financial instruments as principal;
- and in paragraph (b) above “financial instrument” has the meaning given by section 349(5) and (6).
- (5) For the purposes of this section a company is an “associated company” of another at any time if at that time one has control of the other or both are under the control of the same person or persons.
- (6) For the purposes of subsection (5) above, “control”, in relation to a company, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

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(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company, that the affairs of the company are conducted in accordance with his wishes.

(7) There shall be left out of account for the purposes of subsection (6) above—

- (a) any shares held by a company, and
- (b) any voting power or other powers arising from shares held by a company,

if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company's long-term insurance fund (see section 431(2)).

209B Section 209(3AA): hedging arrangements

- (1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the “issuing company”) if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—
 - (a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and
 - (b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.
- (3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.
- (4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax or stamp duty.
- (5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it, any amounts intended under the hedging arrangements to offset some or all of that deduction arise—
 - (a) to the issuing company; or
 - (b) to a company which is a member of the same group of companies as the issuing company.
- (6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—
 - (a) by a company falling within paragraph (a) or (b) of that subsection, or
 - (b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.

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- (7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.
- (8) For the purposes of this section “hedging arrangements”, in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.
- (9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).”.
- (3) This section has effect in relation to interest and other distributions out of assets of a company in respect of securities of the company where the interest is paid, or the distribution is made, on or after 17th April 2002.

103 References to accounting practice and periods of account

- (1) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts), at the appropriate places insert—

““generally accepted accounting practice” has the meaning given by section 836A;”;

““for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice;”;

and

““period of account”—

(a) in relation to a person, means any period for which the person draws up accounts, and

(b) in relation to a trade, profession, vocation or other business means any period for which accounts of the business are drawn up;”.

^{F1}(2)

- (3) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (interpretation), at the appropriate place insert—

““period of account” has the meaning given by section 832(1) of the Taxes Act;”.

- (4) In the following provisions for “normal accounting practice” or “normal accountancy practice”, wherever occurring, substitute “generally accepted accounting practice”

(a) in the Taxes Act 1988, sections ^{F2}... ^{F3}..., 494AA(2), 798B(1) and 837A(2), ^{F4}...;

(b) in the Finance Act 1993 (c. 34), sections ^{F5}... 150(6)(c) and (11)(c), 154(11)(c), (12)(d), (13)(b), (13A)(d) and (13B)(d), 155(7), (11)(d) and (12)(b), 156(2)(e) and (4)(b) and 159(1)(b);

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- (c) in the Finance Act 1994 (c. 9), section 156(3)(a) and (4)(a);
- ^{F6}(d)
- (e) in the Finance Act 1997 (c. 16), in Schedule 12, paragraphs 1(1)(c) and (2)(a), 3(1) and (2), 4(5), 6(1)(a), 15(1)(c) and (2), 22, 28(5) and 30(1);
- (f) in the Finance Act 2000 (c. 17), ^{F7}... in Schedule 15, paragraph 29(4), ^{F8}...;
- (g) in the Capital Allowances Act 2001 (c. 2), sections 179(1)(f), 219(1) ^{F9}...;
- ^{F10}(h)
- ^{F11}(5)

(6) The amendments made by subsections (1) to (3) above have effect for the purposes of provisions of this Act using the expressions mentioned (including provisions inserted by amendment in other enactments) whenever those provisions are expressed to have effect or to come, or to have come, into force.

This is without prejudice to the general effect of those amendments.

Textual Amendments

- F1** S. 103(2) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)
- F2** Word in s. 103(4)(a) repealed (with effect in accordance with Sch. 26 Pt. 3(12) Note of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(12\)](#)
- F3** Word in s. 103(4)(a) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))
- F4** Words in s. 103(4)(a) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5** Word in s. 103(4)(b) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F6** S. 103(4)(d) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F7** Words in s. 103(4)(f) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))
- F8** Words in s. 103(4)(f) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F9** Words in s. 103(4)(g) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F10** S. 103(4)(h) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F11** S. 103(5) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

^{F12}104 Discounted securities etc

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Textual Amendments

- F12** S. 104 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

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105 Financial trading stock

^{F13}(1)

- (2) In Schedule 12 to the Finance Act 1988 (c. 39) (building societies: change of status)—
- (a) in paragraph 1 (which provides that paragraphs 2 to 7 apply where there is a transfer of the whole of a building society's business to a successor company in accordance with section 97 etc of the Building Societies Act 1986 (c. 53)) for “2” substitute “ 3 ”; and
 - (b) omit paragraph 2 (which relates to gilt-edged securities and other financial trading stock and is superseded by Chapter 2 of Part 4 of the Finance Act 1996).

Textual Amendments

F13 S. 105(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

^{F14}106 Valuation of trading stock on transfer of trade

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Textual Amendments

F14 S. 106 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

107 Banks etc in compulsory liquidation

- (1) Schedule 12 to the Finance (No. 2) Act 1992 (c. 48) is amended as follows.
- (2) In paragraph 3 (taxation of certain receipts under Case VI of Schedule D) omit paragraph (c) of sub-paragraph (3) (which has become unnecessary because no interest or dividends any longer fall within it).
- (3) At the end of paragraph 3, insert—
 - “(5) This paragraph and paragraph 4 below have effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter 2 of Part 4 of that Act).”.
- (4) In paragraph 4 (relief from tax) omit sub-paragraph (3) (which provides for deductions from sums excluded from paragraph 3(2) by paragraph 3(3)(c)).
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 1st October 2002.

^{F15}108 Manufactured dividends and interest

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Textual Amendments

F15 S. 108 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

^{F16}109 Venture capital trusts

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Textual Amendments

F16 S. 109 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

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