



Corporation Tax Act 2009

2009 CHAPTER 4

PART 7

DERIVATIVE CONTRACTS

CHAPTER 11

TAX AVOIDANCE

Introduction

689 Overview of Chapter

- (1) This Chapter contains rules connected with tax avoidance.
- (2) In particular—
 - (a) for rules about unallowable purposes, see sections 690 to 692,
 - (b) for rules relating to credits and debits where transactions are not at arm's length, see sections 693 to 695,
 - (c) for rules relating to credits and debits in the case of transactions with non-UK residents, see sections 696 and 697, ^{F1}...
 - ^{F2}(d)
 - ^{F3}(e) for rules about debits arising as a result of the derecognition of derivative contracts, see section 698A, ^{F4}and
 - (f) for rules dealing with tax avoidance arrangements, see sections 698B to 698D.]

Textual Amendments

- F1** Word in s. 689(2)(c) omitted (19.7.2011) (with effect in accordance with Sch. 4 para. 13 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 4 para. 10](#)

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- F2** S. 689(2)(d) omitted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 89\(a\)](#)
- F3** S. 689(2)(e) and word inserted (19.7.2011) (with effect in accordance with Sch. 4 para. 13 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 4 para. 10](#)
- F4** S. 689(2)(f) and word inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 89\(b\)](#)

Unallowable purposes

690 Derivative contracts for unallowable purposes

- (1) This section applies if in any accounting period a derivative contract of a company has an unallowable purpose.
- (2) The company may not bring into account for that period for the purposes of this Part so much of any exchange credit in respect of that contract as is referable to the unallowable purpose on a just and reasonable apportionment.
- (3) The company may not bring into account for that period for the purposes of this Part so much of any debit in respect of that contract as is referable to the unallowable purpose on a just and reasonable apportionment.

[^{F5}(3A) If—

- (a) a credit brought into account for that period for the purposes of this Part by the company would (in the absence of this section) be reduced, and
 - (b) the reduction represents an amount which, if it did not reduce a credit, would be brought into account as a debit in respect of that contract,
- subsection (3) applies to the amount of the reduction as if it were an amount that would (in the absence of this section) be brought into account as a debit.]
- (4) Subsections (2) and (3) are subject to section 692 (allowance of accumulated net losses).
 - (5) An amount which would be brought into account in accordance with this Part as respects any matter apart from this section and section 692—
 - (a) is treated for the purposes of section 699(1) (priority of this Part for corporation tax purposes) as if it were so brought into account, and
 - (b) accordingly may not be brought into account for any other corporation tax purposes as respects that matter.
 - (6) For the purposes of this section and section 692, a credit is an exchange credit, in the case of any company, so far as it is attributable to any exchange gains arising to the company ^{F6}... .
 - (7) For the meaning of “has an unallowable purpose” and “the unallowable purpose” in this section and section 692, see section 691.

Textual Amendments

- F5** S. 690(3A) inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 90\(2\)](#)
- F6** Words in s. 690(6) omitted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 90\(3\)](#)

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Modifications etc. (not altering text)

- C1** S. 690 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), Sch. 5 para. 2](#))
- C2** S. 690 excluded by 2010 c. 4, s. 938V(b) (as inserted (with effect in accordance with Sch. 20 para. 6 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 20 para. 3](#))

691 Meaning of “unallowable purpose”

- (1) For the purposes of sections 690 and 692, a derivative contract of a company has an unallowable purpose in an accounting period if the purposes for which, at times during that period, the company—
- is a party to the contract, or
 - enters into transactions which are related transactions by reference to it, include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.

[^{F7}(1A) In subsection (1)(b) “related transaction”, in relation to a derivative contract, includes anything which equates in substance to a disposal or acquisition of the kind mentioned in section 596(1) (as read with section 596(2)).]

- (2) If a company is not within the charge to corporation tax in respect of a part of its activities, for the purposes of this section the business and other commercial purposes of the company do not include the purposes of that part.
- (3) Subsection (4) applies if a tax avoidance purpose is one of the purposes for which a company—
- is a party to a derivative contract at any time, or
 - enters into a transaction which is a related transaction by reference to a derivative contract of the company.
- (4) For the purpose of subsection (1), the tax avoidance purpose is only regarded as a business or other commercial purpose of the company if it is not—
- the main purpose for which the company is a party to the derivative contract or, as the case may be, enters into the related transaction, or
 - one of the main purposes for which it is or does so.
- (5) The references in subsections (3) and (4) to a tax avoidance purpose are references to any purpose which consists of securing a tax advantage for the company or any other person.
- (6) In this section “tax advantage” has the meaning given by [^{F8}section 1139 of CTA 2010] (meaning of “tax advantage”).

Textual Amendments

- F7** S. 691(1A) inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 7 para. 91](#)
- F8** Words in s. 691(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 642](#) (with [Sch. 2](#))

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692 Allowance of accumulated net losses

- (1) This section applies if—
 - (a) in any accounting period a derivative contract of a company has an unallowable purpose, and
 - (b) there is a net loss in respect of that contract for that period.
- (2) For the purposes of this section, there is such a net loss if—
 - (a) the sum of the debits in respect of that contract which are excluded from being brought into account for that period by section 690(3), exceeds
 - (b) the sum of the exchange credits in respect of that contract which are so excluded by section 690(2).
- (3) The amount of that excess is the amount of the net loss in respect of the contract for the period.
- (4) The amount of the excess accumulated net losses in respect of the contract for an accounting period is to be brought into account as a debit for that period.
- (5) The amount of the excess accumulated net losses in respect of a contract for an accounting period is found as follows.

Step 1

Add together the amount of any net loss arising in respect of the contract for that accounting period and earlier accounting periods.

Step 2

Deduct from the result of Step 1 any amount which was brought into account in accordance with this section in any earlier accounting period.

Step 3

Add together [^{F9}so much] of any credits (other than exchange credits) arising in respect of the contract for that accounting period or any earlier accounting period [^{F10}as are referable to the unallowable purpose mentioned in subsection (1)(a) on a just and reasonable apportionment].

Step 4

Deduct from the result of Step 3 (but not so as to reduce it below nil)—

- (a) so much of any debits arising in respect of the contract for that accounting period or any earlier accounting period as is not excluded from being brought into account by section 690(3), and
- (b) any amount which was brought into account in accordance with this section in any earlier accounting period.

Step 5

Compare the result of Step 2 and the result of Step 4.

The amount of the excess accumulated net losses for the period is the lower of those results.

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Textual Amendments

- F9** Words in s. 692(5) substituted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 92\(a\)](#)
- F10** Words in s. 692(5) inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 92\(b\)](#)

Transactions not at arm's length

693 Bringing into account adjustments under [F11Part 4 of TIOPA 2010]

- (1) This section deals with the credits and debits which are to be brought into account in accordance with this Part as a result of [F12Part 4 of TIOPA 2010] (provision not at arm's length) applying in relation to a company's derivative contracts or related transactions.
- (2) Subsection (3) applies if under [F13Part 4 of TIOPA 2010] an amount (“the imputed amount”) is treated as an amount of profits or losses arising to a company from any of its derivative contracts or related transactions.
- (3) Credits or debits relating to the imputed amount are to be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such profits or losses.
- (4) Subsection (5) applies if under [F14Part 4 of TIOPA 2010] an amount is treated as expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.
- (5) Debts relating to the amount are to be brought into account in accordance with this Part to the same extent as they would be in the case of an actual amount of such expenses.
- [F15(6) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit.]

Textual Amendments

- F11** Words in s. 693 title substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 142\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F12** Words in s. 693(1) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 142\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F13** Words in s. 693(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 142\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F14** Words in s. 693(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 142\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F15** S. 693(6) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 7 para. 4](#)

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694 Exchange gains and losses

- (1) Subsections (2) to (7) apply if—
 - (a) a company is a party to a derivative contract in an accounting period, and
 - (b) an exchange gain or exchange loss arises to the company for the accounting period from the contract.
- (2) Subsection (3) applies if as a result of [^{F16}Part 4 of TIOPA 2010] (provision not at arm's length) the company's profits and losses are calculated for tax purposes as if it were not a party to the contract.
- (3) Any exchange gains or losses which arise to the company from the contract for the accounting period are left out of account in determining the credits and debits to be brought into account in accordance with this Part.
- [^{F17}(3A) If the contract is to any extent matched, subsection (3) applies to leave out of account only the amount of the exchange gains or losses arising to the company in relation to the contract to the extent that the contract is unmatched (an amount which may be nil).]
- (4) Subsection (5) applies if as a result of [^{F18}Part 4 of TIOPA 2010] the company's profits and losses are calculated for tax purposes as if the terms of the contract were those which would have been agreed by the company and the other party to the contract had they been dealing at arm's length (“the arm's length terms”).
- (5) The credits and debits which are to be brought into account in accordance with this Part in the case of the company are to be determined on the assumption that the amount of any exchange gain or loss arising to the company from the contract in the accounting period is the adjusted amount.
- (6) In subsection (5), the “adjusted amount” means the amount of an exchange gain or loss which would have arisen from the contract if its terms were the arm's length terms.
- (7) That amount may be nil.
- [^{F19}(7A) Subsections (5) to (7) apply only to the extent that the contract is unmatched.]
- (8) Nothing in [^{F20}Part 4 of TIOPA 2010] requires the amounts brought into account in accordance with this Part in respect of exchange gains and losses from derivative contracts to be calculated on the assumption that the arm's length provision had been made instead of the actual provision.
- (9) But subsection (8) does not affect the application of—
 - (a) subsection (3) under subsection (2), or
 - (b) subsection (5) under subsection (4).
- (10) In subsection (8) “the actual provision” and “the arm's length provision” have the same meaning as in [^{F21}Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act)].
- [^{F22}(11) For the purposes of this section a derivative contract of a company is matched if and to the extent that—
 - (a) it is in a matching relationship with another derivative contract or loan relationship of the company, or
 - (b) exchange gains or losses arising in relation to the derivative contract are excluded from being brought into account under regulations under section 606(4)(b),
 and “unmatched” is to be construed accordingly.

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- (12) A derivative contract is in a matching relationship with another derivative contract or loan relationship if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.
- (13) In this section “economic risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.
- (14) In this section “loan relationship” has the same meaning as in Part 5 (see section 302).]

Textual Amendments

- F16** Words in s. 694(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 143\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F17** S. 694(3A) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2016 \(c. 24\), Sch. 7 para. 11\(2\)](#)
- F18** Words in s. 694(4) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 143\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F19** S. 694(7A) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2016 \(c. 24\), Sch. 7 para. 11\(3\)](#)
- F20** Words in s. 694(8) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 143\(2\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F21** Words in s. 694(10) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 143\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F22** S. 694(11)-(14) inserted (with effect in accordance with Sch. 7 para. 12 of the amending Act) by [Finance Act 2016 \(c. 24\), Sch. 7 para. 11\(4\)](#)

695 Transfers of value to connected companies

- (1) This section applies if—
- a company (“A”) paid an amount (“amount X”) to a company (“B”) for the grant of an option,
 - there is a failure to exercise in full all the rights under the option,
 - until the failure the option was a derivative contract of A,
 - as a result of the failure there is a transfer of value by A to B,
 - B is a connected company in relation to A, and
 - B is not chargeable to corporation tax in accordance with this Part in respect of the derivative contract.
- (2) A must bring into account a credit of the appropriate amount in respect of the derivative contract for the accounting period in which the option expired or would have expired if none of the rights under it had been exercised.
- (3) If the option expired, “the appropriate amount” means amount X.
- (4) If any rights under the option were exercised (in whole or in part), “the appropriate amount” means amount X less so much of it as is referable, on a just and reasonable basis, to the rights which have been so exercised.

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- (5) In determining for the purposes of subsection (1)(d) whether there is a transfer of value, the assumption in subsection (6) is made.
- (6) That assumption is that if there had not been a connection between A and B—
- (a) all the rights under the option would have been exercised in full, and
 - (b) all of those rights would have been exercised on the latest date on which they were exercisable.
- (7) In this section “option” is to be construed as if section 580(2) and (3) (meaning of “option”) were omitted.
- (8) For the purposes of this section, B is a connected company in relation to A in an accounting period if there is a time in the period when—
- (a) A controls B,
 - (b) B controls A, or
 - (c) A and B are both controlled by the same person.
- (9) But A and B are not taken to be controlled by the same person just because they have been under the control of—
- [^{F23}(za) the Crown,]
- (a) a Minister of the Crown,
 - (b) a government department,
 - (c) a Northern Ireland department,
 - (d) a foreign sovereign power, or
 - (e) an international organisation.
- (10) Section 472 (meaning of “control”) applies for the purposes of this section.

Textual Amendments

F23 S. 695(9)(za) inserted (1.4.2009 retrospective) by [Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), **6(6)**

[^{F24}695A] **Disguised distribution arrangements involving derivative contracts**

- (1) This section applies if—
- (a) a company (“A”) is a party to arrangements involving one or more derivative contracts (each of which is referred to in this section as a “specified contract”),
 - (b) another company (“B”) is also a party to the arrangements (whether or not at the same time as A),
 - (c) A and B are members of the same group,
 - (d) the arrangements result in what is, in substance, a payment (directly or indirectly) from A to B of all or a significant part of the profits of the business of A or of a company which is a member of the same group as A or B (or both) (“the profit transfer”), and
 - (e) the arrangements are not arrangements of a kind which companies carrying on the same kind of business as A would enter into in the ordinary course of that business.
- (2) No debits in respect of a specified contract, which—

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- (a) relate to the profit transfer, and
 - (b) apart from this section, would be brought into account by A or B for the purposes of this Part,are to be so brought into account.
- (3) Where one or more debits in respect of a specified contract are not brought into account by virtue of subsection (2), credits arising from the same contract which—
 - (a) relate to the same profit transfer, and
 - (b) apart from this section, would be brought into account by A or B for the purposes of this Part,are not to be so brought into account to the extent that the total of those credits does not exceed the total of those debits.
- (4) Subsection (3) does not apply to any credit which arises directly or indirectly in consequence of, or otherwise in connection with, arrangements the main purpose of which, or one of the main purposes of which, is the securing of a tax advantage for any person.
- (5) For the purposes of this section a company is a member of the same group as another company if it is (or has been) a member of the same group at a time when the arrangements mentioned in subsection (1) have effect.
- (6) In this section—
 - “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;
 - “group” has the meaning given by section 357GD of CTA 2010;
 - “tax advantage” has the meaning given by section 1139 of CTA 2010.]

Textual Amendments

F24 S. 695A inserted (with effect in accordance with s. 29(2)-(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 29\(1\)](#)

Transactions with non-UK residents

696 Derivative contracts with non-UK residents

- (1) This section applies in relation to a company (“A”) if, as a result of any transaction—
 - (a) A becomes a party to a derivative contract to which a non-UK resident (“NR”) is a party,
 - (b) NR becomes a party to a derivative contract to which A is a party, or
 - (c) A and NR both become a party to a derivative contract.
- (2) For each accounting period for any part of which A and NR are both a party to a derivative contract which makes provision for notional interest payments, the credits and debits which fall to be brought into account in accordance with this Part in respect of the contract in the case of A do not include the amount of any excluded debit in relation to that contract.

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- (3) The amount of an excluded debit is calculated by determining for the accounting period the amount (if any) by which—
- (a) the sum of any notional interest payments made by A to NR while A and NR are both a party to the contract, exceeds
 - (b) the sum of any notional interest payments made by NR to A during that time.
- (4) For the purposes of this section, a payment is a notional interest payment if—
- (a) a derivative contract specifies—
 - (i) a notional principal amount,
 - (ii) a period, and
 - (iii) a rate of interest,
 - (b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and
 - (c) the value of the rate is the same at all times as that of the specified rate of interest.
- (5) This section is subject to section 697.

697 Exceptions to section 696

- (1) Section 696 does not apply if A—
- (a) is a bank, building society, financial trader ^[F25], recognised clearing house, ^[F26]recognised CSD^[F27]... or third country central counterparty],
 - (b) is a party to the derivative contract solely for the purposes of a trade or part of a trade it carries on in the United Kingdom, and
 - (c) is a party to it otherwise than as agent or nominee of another person.

- ^[F28](2) Section 696 does not apply if NR—
- (a) is chargeable to corporation tax or income tax in respect of income arising from the derivative contract (or would be if there were any such income), and
 - (b) is a party to the derivative contract otherwise than as agent or nominee of another person.]

- (3) Section 696 does not apply if arrangements made in relation to the territory in which NR is resident—
- (a) have effect ^[F29]under section 2(1) of TIOPA 2010] (double taxation relief), and
 - (b) make provision in relation to interest (as defined in the arrangements).

- (4) It does not matter whether the provision mentioned in subsection (3)(b) is for relief or otherwise.

- (5) If NR is a party to the contract as agent or nominee of another person, subsection (3) applies as if the reference to the territory in which NR is resident were a reference to the territory in which that other person is resident.

- (6) In this section—
- ^[F30]“recognised clearing house”, ^[F31]“recognised CSD”^[F32]... and “third country central counterparty” have the meanings given by section 285 of FISMA 2000 (exemptions for recognised ^[F33]bodies)].

^{F34}
...

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Textual Amendments

- F25** Words in s. 697(1)(a) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013](#) (S.I. 2013/504), regs. 1(2), **26(2)(a)** (with regs. 52-58)
- F26** Words in s. 697(1)(a) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), reg. 1, **Sch. para. 14(a)** (with regs. 7(4), 9(1))
- F27** Words in s. 697(1)(a) omitted (31.12.2020) by virtue of [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/710), regs. 1(3), **5(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F28** S. 697(2) substituted (6.4.2020) by [Finance Act 2019](#) (c. 1), **Sch. 5 paras. 21(2)**, 35 (with Sch. 5 para. 36)
- F29** Words in s. 697(3)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010](#) (c. 8), s. 381(1), **Sch. 8 para. 93** (with Sch. 9 paras. 1-9, 22)
- F30** Words in s. 697(6) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013](#) (S.I. 2013/504), regs. 1(2), **26(2)(b)** (with regs. 52-58)
- F31** Words in s. 697(6) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), reg. 1, **Sch. para. 14(b)(i)** (with regs. 7(4), 9(1))
- F32** Words in s. 697(6) omitted (31.12.2020) by virtue of [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/710), regs. 1(3), **5(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F33** Word in s. 697(6) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), reg. 1, **Sch. para. 14(b)(ii)** (with regs. 7(4), 9(1))
- F34** Words in s. 697(6) omitted (6.4.2020) by virtue of [Finance Act 2019](#) (c. 1), **Sch. 5 paras. 21(3)**, 35 (with Sch. 5 para. 36)

Disposals for consideration not fully recognised by accounting practice

^{F35} 698 Disposals for consideration not fully recognised by accounting practice

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Textual Amendments

- F35** S. 698 omitted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015](#) (c. 33), **Sch. 7 para. 93**

^{F36} Derecognition

Textual Amendments

- F36** S. 698A and cross-heading inserted (19.7.2011) (with effect in accordance with Sch. 4 para. 13 of the amending Act) by [Finance Act 2011](#) (c. 11), **Sch. 4 para. 11**

698A Debits arising from derecognition of derivative contracts

(1) This section applies where—

- (a) a company is at any time a party to tax avoidance arrangements,

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- (b) as a result of those arrangements, a derivative contract to which the company is party, or any part of such a contract, is (in accordance with generally accepted accounting practice) derecognised by the company, and
 - (c) the company continues to be a party to the derivative contract immediately after the transaction or other event giving rise to the derecognition.
- (2) No debit that would apart from this section be brought into account by the company for the purposes of this Part as a result of the derecognition is to be so brought into account.
- (3) An amount that would be brought into account for the purposes of this Part as respects any matter apart from this section—
- (a) is treated for the purposes of section 699(1) (priority of this Part for corporation tax purposes) as if it were so brought into account, and
 - (b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.
- (4) For the purposes of this section a company is to be treated as a party to a derivative contract even though it has disposed of its rights and liabilities under the contract to another person—
- (a) under a repo or stock lending arrangement, or
 - (b) under a transaction which is treated as not involving any disposal as a result of section 26 of TCGA 1992 (mortgages and charges not to be treated as disposals).
- (5) For the purposes of this section arrangements are “tax avoidance arrangements” if the main purpose, or one of the main purposes, of any party to the arrangements, in entering into them, is to obtain a tax advantage.
- (6) In subsection (5)—
- (a) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions, and
 - (b) “tax advantage” has the meaning given by section 1139 of CTA 2010.]

^{F37}Counteracting avoidance arrangements

Textual Amendments

F37 Ss. 698B-698D and cross-heading inserted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 94](#)

698B Counteracting effect of avoidance arrangements

- (1) Any derivative-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to credits and debits to be brought into account for the purposes of this Part.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

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- (3) For the meaning of “relevant avoidance arrangements” and “derivative-related tax advantage”, see section 698C.

698C Interpretation of section 698B

- (1) This section applies for the interpretation of section 698B (and this section).
- (2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a derivative-related tax advantage.
- (4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any derivative-related tax advantages that would (in the absence of section 698B) arise from them can reasonably be regarded as consistent with any principles on which the provisions of this Part that are relevant to the arrangements are based (whether expressed or implied) and the policy objectives of those provisions.
- (5) A company obtains a “derivative-related tax advantage” if—
- (a) it brings into account a debit to which it would not otherwise be entitled,
 - (b) it brings into account a debit which exceeds that to which it would otherwise be entitled,
 - (c) it avoids having to bring a credit into account,
 - (d) the amount of any credit brought into account by the company is less than it would otherwise be, or
 - (e) it brings a debit or credit into account earlier or later than it otherwise would.
- (6) In subsection (5), references to bringing a debit or credit into account are references to bringing a debit or credit into account for the purposes of this Part.

698D Examples of results that may indicate exclusion not applicable

- (1) Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a derivative-related tax advantage are not excluded by section 698C(4) from being “relevant avoidance arrangements” for the purposes of section 698B—
- (a) the elimination or reduction, for purposes of corporation tax, of profits of a company arising from any of its derivative contracts, where for economic purposes profits, or greater profits, arise to the company from that contract;
 - (b) the creation or increase, for purposes of corporation tax, of a loss or expense arising from a derivative contract, where for economic purposes no loss or expense, or a smaller loss or expense, arises from that contract;
 - (c) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss or be so recognised earlier;
 - (d) ensuring that a derivative contract is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements;

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- (e) enabling a company to bring into account a debit in respect of an exchange loss, in circumstances where a corresponding exchange gain would not give rise to a credit or would give rise to a credit of a smaller amount;
 - (f) enabling a company to bring into account a debit in respect of a fair value loss in circumstances where a corresponding fair value gain would not give rise to a credit or would give rise to a credit of a smaller amount.
- (2) But in each case the result concerned is only capable of indicating that section 698C(4) is not available if it is reasonable to assume that such a result was not the anticipated result when the provisions of this Part that are relevant to the arrangements were enacted
- (3) In subsection (1)(f) references to a fair value gain or a fair value loss are references respectively to—
- (a) a profit to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question, or
 - (b) a loss to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question.
- (4) “Arrangements” and “derivative-related tax advantage” have the same meaning as in section 698C.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 322(2A)(zb) inserted by [2016 c. 24 s. 73\(5\)](#)
- s. 934(1A)(1B) inserted by [2023 c. 30 Sch. 2 para. 12\(2\)](#)
- s. 962(3A) inserted by [2023 c. 30 Sch. 2 para. 12\(5\)\(b\)](#)
- s. 962A(3A) inserted by [2023 c. 30 Sch. 2 para. 12\(6\)\(b\)](#)
- s. 963(1A) inserted by [2023 c. 30 Sch. 2 para. 12\(7\)\(a\)](#)
- s. 1058B(5)(ea) inserted by [2023 c. 20 Sch. para. 57](#)
- s. 1094(2A)-(2C) inserted by [2012 c. 14 Sch. 3 para. 13\(3\)](#)
- s. 1106(4A)-(4C) inserted by [2012 c. 14 Sch. 3 para. 14\(3\)](#)
- s. 1138A applied by [S.I. 2024/348 reg. 3](#)