

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 10: Close companies

Chapter 3: Charge to tax in case of loan to participator

Section 455: Charge to tax in case of loan to participator

1378. This section imposes a charge to tax if a close company makes a loan, or advances money, to a participator or an associate of a participator. It is based on section 419(1) to (3), (6) and (7) of ICTA.
1379. *Subsection (1)* states when this section applies. It uses the expression “relevant person”, which is defined in *subsection (6)*.
1380. *Subsection (2)* imposes the charge.
1381. *Subsection (3)* states when the tax is due and payable.
1382. *Subsection (4)* extends the scope of the charge. It is based on section 419(2) of ICTA, which is expressed to apply for the purposes of that section. *Subsection (4)* is expressed to apply for the purposes of, among other things, section 456 – that is, including the provisions of that section which are based on section 420 of ICTA. Since section 420 of ICTA makes exceptions to section 419 of that Act, defining the scope of *subsection (4)* in this way does not change the law.
1383. *Subsection (5)* extends the circumstances in which a person is treated as being a participator in a company.

Section 456: Exceptions to the charge under section 455

1384. This section makes certain exceptions to the charge under section 455. It is based on sections 419(1) and 420 of ICTA.
1385. *Subsection (1)* is an exception for money-lending companies.
1386. *Subsection (2)* is an exception for ordinary supplies of goods and services.
1387. *Subsection (2)* refers to a company’s “trade or business”. It does not refer to a company’s “vocation”. This is a minor change in the law. See the commentary on section 452 and *Change 4* in Annex 1.
1388. *Subsections (3) to (8)* are an exception for small amounts.
1389. *Subsections (3), (4) and (7)* apply not only to loans but also to advances. This is a minor change in the law to bring it into line with practice. See *Change 30* in Annex 1.

Section 457: Section 456: meaning of “material interest in a company”

1390. This interpretative section is based on section 420(2) of ICTA.
1391. The closing sentence of section 420(2) of ICTA attracts, with modifications, section 168(11) of ICTA. Section 168(11) of ICTA has been rewritten in section 68 of ITEPA and repealed. This section largely replicates section 68 of ITEPA.
1392. Section 168(11) of ICTA is reproduced below for the reader’s convenience, as it stood before ITEPA and as modified by section 420(2) of ICTA.

“A person shall be treated as having a material interest in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates –

- (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means, to control more than 5 per cent of the ordinary share capital of the company, or
- (b) in the case of a close company, possesses, or is entitled to acquire, such rights as would in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent of the assets which would then be available for distribution among the participators.

In this subsection “associate” has the same meaning as in section 417(3), except that for this purpose “relative” in that subsection has the meaning given by section 160(6), and “participator” has the meaning given by section 417(1).

1393. The closing sentence of section 420(2) of ICTA provides for the words following “417(3)” to be omitted, and the words in strikethrough reflect this. But this omission merely disapplies the definition of “relative” in section 160(6) of ICTA. It does not extend to the underlined words, because omitting the underlined words would leave “participator” undefined. FA 1989 inserted the underlined words into section 168(11) of ICTA by way of consequential amendment, and it appears that the need to make a further consequential amendment to section 420(2) of that Act was overlooked.
1394. *Subsection (2)(b)* has been compressed for the sake of brevity and consistency with section 452(2)(b)(ii). See the commentary on that provision.

Section 458: Relief in case of repayment or release of loan

1395. This section gives relief from tax in cases in which:
- a loan or advance from a close company has given rise to a charge under section 455, and
 - the loan or advance is repaid or the debt in respect of it is released or written off.
1396. It is based on section 419(4) to (4B) of ICTA.
1397. *Subsection (1)* states when the section applies.
1398. *Subsection (2)* specifies the relief and the circumstances in which it is given.
1399. *Subsection (3)* is about claiming the relief. It reflects paragraph 21 of Schedule 39 to FA 2008, which substitutes “4 years” for “six years” in section 419(4) of ICTA with effect from 1 April 2010.
1400. If the company becomes eligible for relief after the tax due under section 455 becomes due and payable, *subsections (4) and (5)* defer the relief.
1401. *Subsection (6)* sets the link with TMA.

Section 459: Loan treated as made to participator

1402. This section blocks arrangements to circumvent the charge under section 455. It treats certain loans or advances, which would otherwise be outside the scope of that section, as having been made to a relevant person. It is based on section 419(5) and (7) of ICTA.
1403. *Subsection (1)* states when the section applies.
1404. *Subsection (2)* is the main operative provision.
1405. Section 419(5) of ICTA provides for that section to apply as if the loan or advance had been made to the individual in question. *Subsection (2)*, which is based on section 419(5), provides for sections 455 to 458 to apply. These sections include provisions which are based on section 420 of ICTA. Since section 420 of ICTA makes exceptions to section 419 of that Act, defining the scope of *subsection (2)* in this way does not change the law.
1406. *Subsection (3)* makes two exceptions to this section.
1407. *Subsection (4)* extends the circumstances in which a person is treated as a participator in a company.

Section 460: Loan treated as made by close company

1408. This section extends the scope of sections 455 to 459 to catch loans or advances made by certain companies which are controlled by other companies. It is based on section 422(1) to (3) and (6) of ICTA.
1409. *Subsection (1)* states when the section applies.
1410. *Subsection (2)* prescribes the consequences if the company (C) making the loan or advance is controlled by a close company.
1411. *Subsection (3)* prescribes the consequences if C is not controlled by a close company but a close company subsequently acquires control of it.
1412. *Subsections (2)* and *(3)* operate in relation to section 459, because the references in section 422(1) and (2) of ICTA to section 419 of that Act pick up section 419(5) of that Act.
1413. *Subsection (4)* deals with the case in which two or more close companies control C.
1414. *Subsections (5)* and *(6)* are signposts.
1415. *Subsection (7)* extends the circumstances in which a company is deemed to make a loan.

Section 461: Exception to section 460

1416. This section makes an exception to section 460. It is based on section 422(4) and (6) of ICTA.

Section 462: Determination of particular questions as a result of section 460

1417. This section supplements sections 455 to 459. It is based on section 422(5) and (6) of ICTA.
1418. *Subsection (1)* states when the section applies. It operates in relation to section 459 for the reason given in the commentary on section 460(2) and (3).
1419. *Subsection (2)* lists the questions which come within this section, and requires them to be determined by reference to the company labelled C in section 460(1).

Section 463: Taxation of debtor on release of loan to trustees of settlement which has ended

1420. This section deems income to arise to a company for corporation tax purposes in certain circumstances when a loan or advance from a close company is released or written off. It is based on section 421 of ICTA.
1421. This section deals with the following case, as specified in *subsections (2) to (5)*.
- A close company (X) makes a loan or advance to the trustees of a settlement.
 - Another company (Y) becomes the debtor in respect of this loan or advance.
 - After the settlement has ended, X releases or writes off the whole or part of the loan or advance.
1422. *Subsection (6)* is the main operative provision.
1423. *Subsection (7)* quantifies the income. Section 421(1)(a) of ICTA uses the word “gross” in a manner analogous to “grossing up” as defined in section 1128(3) of this Act. *Subsection (7)* therefore uses a formula to rewrite section 421(1)(a) and (b) of ICTA on the lines of the formula in section 1128(3).

Section 464: Section 463: other person treated as releasing or writing off debt

1424. This section supplements section 463. It is based on section 422(5) of ICTA.
1425. *Subsection (1)* states when the section applies. It operates in relation to section 459 for the reason given in the commentary on section 460(2) and (3).
1426. *Subsection (2)* is the operative provision.