



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 13

#### OTHER SPECIAL TYPES OF COMPANY ETC

### CHAPTER 6

#### BANKS ETC IN COMPULSORY LIQUIDATION

#### **634 Overview of Chapter**

- (1) This Chapter provides for the receipts of certain types of company being wound up to be charged to corporation tax.
- (2) For provision charging the receipts of such companies to income tax, see Chapter 3A of Part 14 of ITA 2007.

#### **635 Application of Chapter**

- (1) This Chapter applies if—
  - (a) a company is being or has been wound up by the court in the United Kingdom, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—
  - (a) a person of the kind mentioned in paragraph (b) of the definition of “bank” in section 1120(2) (persons with permission under [<sup>F1</sup>Part 4A] of FISMA 2000 to accept deposits)<sup>F2</sup> ...
  - <sup>F3</sup>(b) .....
- (3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the “deposit-taking trade”).

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- (4) Condition C is that the company is insolvent and—
- (a) was so when the winding up proceedings started, or
  - (b) became so at any time in the period of 12 months following the day on which those proceedings started.
- (5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—
- (a) the day on which the winding up proceedings started, and
  - (b) the day on which the company permanently ceased to carry on the deposit-taking trade.
- <sup>F4</sup>(6) .....

#### Textual Amendments

- F1** Words in s. 635(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 129(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F2** Word in s. 635(2)(a) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **17(8)(a)(i)** (with regs. 39-41, 46); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F3** [S. 635\(2\)\(b\)](#) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **17(8)(a)(ii)** (with regs. 39-41, 46); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F4** [S. 635\(6\)](#) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **17(8)(b)** (with regs. 39-41, 46); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### 636 Charge to corporation tax on winding up receipts

- (1) The charge to corporation tax on income applies to winding up receipts arising from the deposit-taking trade.
- (2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.
- (3) A “winding up receipt” means (subject to subsection (4)) a sum received by the company or its liquidator after—
  - (a) the start of the winding up proceedings, or
  - (b) if later, the permanent cessation of the deposit-taking trade.
- (4) The following are not winding up receipts—
  - (a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and
  - (b) a sum realised by the transfer of an asset required to be valued under section 162 of CTA 2009 (valuation of trading stock on cessation).

### 637 Transfer of rights to payment

- (1) This section applies if—
  - (a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and

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- (b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.
- (2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.
- (3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

### **638 Allowable deductions**

- (1) In calculating the amount on which corporation tax is charged under this Chapter for an accounting period, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to corporation tax under this Chapter.
- (2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the accounting period (but subject to subsections (4) and (5)).
- (3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—
  - (a) would have been deducted in calculating the profits of the trade for corporation tax purposes, or
  - (b) would have been deducted from or set off against the profits of the trade for corporation tax purposes.
- (4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.
- (5) A loss, expense or debit is only within subsection (3) if incurred—
  - (a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or
  - (b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.
- (6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

### **639 Election to carry back**

- (1) This section applies if a winding up receipt arising from the deposit-taking trade is received in an accounting period beginning no later than 6 years after the company permanently ceased to carry on the trade.
- (2) The company or its liquidator may elect that the corporation tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.
- (3) The election must be made before the end of the period of two years beginning immediately after the end of the accounting period in which the receipt is received.
- (4) If an election is made under this section an assessment to corporation tax must be made accordingly (regardless of anything in the Corporation Tax Acts).

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#### **640 Relationship of Chapter with other corporation tax provisions**

- (1) If a winding up receipt arising from the deposit-taking trade is chargeable to corporation tax under this Chapter it is not chargeable to corporation tax under any other provision.
- (2) This Chapter has effect regardless of section 464(1) of CTA 2009 (priority of loan relationship provisions).

#### **641 Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) Winding up proceedings start against a company at the time when the petition for its winding up by the court is presented.
- (3) There is the permanent cessation of a company's trade if—
  - (a) the company ceases to carry on the trade, or
  - (b) the company ceases to be within the charge to corporation tax in respect of the trade,whether or not the trade is in fact ceased.
- (4) A company is insolvent at any time if at that time—
  - (a) it is unable to pay its debts as they fall due, or
  - (b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).
- (5) “Company” means—
  - (a) a company as defined in section 1(1) of the Companies Act 2006, or
  - (b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).
- (6) For the meaning of “deposit-taking trade” and “winding up receipt”, see sections 635(3) and 636(3) respectively.

**Changes to legislation:**

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