



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 16

#### FACTORING OF INCOME ETC

### CHAPTER 2

#### FINANCE ARRANGEMENTS

#### *Type 2 arrangements*

#### **763 Type 2 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
  - (a) under the arrangement a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor [<sup>F1</sup>or a person connected with the transferor] is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (c) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (d) there is a relevant change in relation to the partnership (see section 764), and
  - (e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

[<sup>F2</sup>(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.]

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- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

#### Textual Amendments

- F1** Words in s. 763(2)(b) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 39\(2\)](#)
- F2** S. 763(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 39\(3\)](#)

### 764 Relevant change in relation to partnership

- (1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.
- (2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition B is that—
  - (a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.
- (4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—
  - (a) if it is condition A that is met, to the person who becomes a member of the partnership, and
  - (b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

### 765 Certain tax consequences not to have effect

- (1) This section applies if—
  - (a) there is a type 2 finance arrangement, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) In such a case—
  - (a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to the transferor <sup>F3</sup> or the person connected with

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- the transferor] as if the relevant change in relation to the partnership had not occurred, and
- (b) accordingly the finance arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the transferor [<sup>F3</sup>or the person connected with the transferor] would otherwise have been charged to corporation tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the transferor [<sup>F3</sup>or the person connected with the transferor] is not so brought into account, or
- (c) the transferor [<sup>F3</sup>or the person connected with the transferor] becomes entitled to an income deduction.
- (4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 763(2)(e) were payable to the partnership before the relevant change in relation to it occurred.
- (5) An income deduction is—
- (a) a deduction in calculating income for corporation tax purposes, or
- (b) a deduction from total profits.

#### Textual Amendments

- F3** Words in s. 765 inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 40](#)

## 766 Deemed loan relationship

- (1) This section applies if—
- (a) there is a type 2 finance arrangement, and
- (b) the transferor is a company within the charge to corporation tax.
- (2) In relation to the company—
- (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
- (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the company under the transaction.
- (4) The reference in subsection (3) to the partnership's accounts includes a reference to the transferor's accounts.
- (5) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 763(2)(e) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,

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- (b) treat the interest elements of the payments as paid when the payments are paid, and
- (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

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