
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, Paragraph 5. (See end of Document for details)

SCHEDULES

SCHEDULE 7

HYBRID AND OTHER MISMATCHES

PART 2

CHAPTER 3 MISMATCHES: RELEVANT DEBT RELIEF CIRCUMSTANCES

5 After section 259NEA insert—

“Relevant debt relief circumstances

259NEB Relevant debt relief circumstances: introductory

- (1) This section applies for the purposes of section 259CB(3).
- (2) Excess arises in “relevant debt relief circumstances” if (and only if)—
 - (a) the payment or quasi-payment mentioned in section 259CB(2) comprises the release of a liability to pay an amount under a debtor relationship (within the meaning given by section 302(6) of CTA 2009), and
 - (b) the circumstances in section 259NEC, 259NED, 259NEE, or 259NEF apply.
- (3) For the purposes of those sections references to—
 - (a) “the relevant release” means the release of liability mentioned in subsection (2)(a),
 - (b) “loan relationship” is to be construed in accordance with section 302 of CTA 2009,
 - (c) “amortised cost basis of accounting” is to be construed in accordance with section 313(4) and (4A) of that Act,
 - (d) “connected companies relationship” is to be construed in accordance with section 348 of that Act, and
 - (e) “deemed release” and “relevant rights” are to be construed in accordance with section 358(3) to (4A) of that Act.

259NEC Release of debts

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—

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- (a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship, and
 - (b) condition A, B, C, D or E is met.
- (3) Condition A is that the release is part of a statutory insolvency arrangement (within the meaning of section 1319 of CTA 2009).
- (4) Condition B is that the release is not a release of relevant rights and is—
- (a) in consideration of shares forming part of the ordinary share capital of a payee, or
 - (b) in consideration of any entitlement to such shares.
- (5) Condition C is that—
- (a) a payee meets one of the insolvency conditions (see subsection (8)), and
 - (b) the debtor relationship is not a connected companies relationship.
- (6) Condition D is that the release is in consequence of the making of a mandatory reduction instrument or a third country instrument or the exercise of a stabilisation power under Part 1 of the Banking Act 2009.
- (7) Condition E is that—
- (a) the release is neither a deemed release nor a release of relevant rights, and
 - (b) immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months a payee would be unable to pay its debts.
- (8) For the purposes of this section a company meets the insolvency conditions if—
- (a) it is in insolvent liquidation,
 - (b) it is in insolvent administration,
 - (c) it is in insolvent administrative receivership,
 - (d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.
- (9) Section 323(A1) of CTA 2009 applies for the interpretation of subsection (7) (b); and the rest of that section applies for the interpretation of subsection (8).

259NED Release of connected companies debts

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
- (a) the relevant release takes place in an accounting period for which—

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- (i) an amortised cost basis of accounting is used in respect of the debtor relationship, and
 - (ii) the debtor relationship is a connected companies relationship, and
- (b) the release is neither—
- (i) a deemed release, nor
 - (ii) a release of relevant rights.

259NEE Release of connected companies debts during creditor's insolvency

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
- (a) the relevant release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of the debtor relationship,
 - (b) condition A, B, C, D or E in section 357 of CTA 2009 is met in relation to the payer,
 - (c) immediately before the time when any of those conditions was first met the debtor relationship was a connected companies relationship, and
 - (d) immediately after that time it was not such a relationship.

259NEF Corporate rescue: debt released shortly after connection arises

- (1) This section is to be read with section 259NEB (relevant debt relief circumstances: introductory).
- (2) The circumstances in this section are—
- (a) the relevant release takes place within 60 days of the payer and a payee becoming connected with one another (within the meaning of section 363 of CTA 2009), and
 - (b) the corporate rescue conditions are met.
- (3) The corporate rescue conditions are—
- (a) that the payer and the payee became connected as a result of an arm's length transaction, and
 - (b) immediately before the payer and the payee became connected it was reasonable to assume that, without the connection and any arrangements of which the connection forms part, there would be a material risk that at some point within the next 12 months the payee would have been unable to pay its debts.
- (4) For the purposes of subsection (3)(b), a payee is unable to pay its debts if—
- (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, taking into account its contingent and prospective liabilities.”

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