



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XI

#### CLOSE COMPANIES

#### CHAPTER II

##### CHARGES TO TAX IN CONNECTION WITH LOANS

#### 419 Loans to participators etc.

- (1) <sup>M1</sup>Subject to the following provisions of this section and section 420, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to [<sup>F1</sup>25 per cent. of the amount of the loan or advance].

In relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, this subsection shall have effect with the substitution for “assessed on and recoverable” of “due”.

- (2) <sup>M2</sup>For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—
- (a) that person incurs a debt to the close company; or
  - (b) a debt due from that person to a third party is assigned to the close company;
- and then the close company shall be regarded as making a loan of an amount equal to the debt.
- [<sup>F2</sup>(3) Tax due by virtue of this section in relation to any loan or advance shall be due and payable [<sup>F3</sup>in accordance with section 59D of the Management Act] on the day

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following the expiry of nine months from the end of the accounting period in which the loan or advance was made.]

- (4)<sup>M3</sup>Where a close company has made a loan or advance which gave rise to a charge to tax on the company under subsection (1) above and

- [<sup>F4</sup>(a) the loan or advance or any part of it is repaid to the company,<sup>F5</sup> or  
 (b) the whole or part of the debt in respect of the loan or advance is released or written off,]

relief shall be given from that tax, or a proportionate part of it <sup>F6</sup>. . . .

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the financial year in which the repayment is made [<sup>F7</sup> or the release or writing off occurs].

- [<sup>F8</sup>(4A) Where

- [ the repayment of the whole or any part of a loan or advance occurs on or after  
<sup>F9</sup>(a) the day on which tax by virtue of this section becomes due in relation to that loan or advance,<sup>F10</sup> or  
 (b) the release or writing off of the whole or any part of the debt in respect of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance,]

relief in respect of the repayment [<sup>F11</sup>, release or writing off] shall not be given under subsection (4) above at any time before the expiry of nine months from the end of the accounting period in which the repayment [<sup>F11</sup>, release or writing off] occurred.]

- [<sup>F12</sup>(4B) Schedule 1A to the Taxes Management Act 1970 (claims and elections not included in return) applies to a claim for relief under subsection (4) above unless—

- (a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and  
 (b) the relief may be given at the time the claim is made.]

- (5)<sup>M4</sup>Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—

- (a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and  
 (b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to him.

- (6) In subsections (1) and (5)(b) above the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity <sup>F13</sup>. . . .

- (7) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

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### Subordinate Legislation Made

- P1** S. 419(1)(3): 30.9.1993 appointed for the purposes of s. 419(1)(3) by S.I. 1992/3066, **art. 2(2)(b)**

### Textual Amendments

- F1** Words in s. 419(1) substituted (with effect in accordance with Sch. 3 para. 24(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(2)**
- F2** S. 419(3) substituted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(2)**
- F3** Words in s. 419(3) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(2)**; S.I. 1998/3173, **art. 2**
- F4** Word in s. 419(4) renumbered as s. 419(4)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(a)**
- F5** S. 419(4)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(b)**
- F6** Words in s. 419(4) repealed (with effect in accordance with s. 117(4)(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 19 para 47(3), **Sch. 27 Pt. 3(28)**, Note; S.I. 1998/3173, **art. 2**
- F7** Words in s. 419(4) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(c)**
- F8** S. 419(4A) inserted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(3)**
- F9** Word in s. 419(4A) renumbered as s. 419(4A)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(a)**
- F10** S. 419(4A)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(b)**
- F11** Words in s. 419(4A) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(c)**
- F12** S. 419(4B) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(4)**; S.I. 1998/3173, **art. 2**
- F13** Words in s. 419(6) repealed (with effect in accordance with s. 173(6) of the repealing Act) by Finance Act 1996 (c. 8), s. 173(4), **Sch. 41 Pt. 5(29)**, Note

### Modifications etc. (not altering text)

- C1** See 1970(M) s.109—*application of s.419 to corporation tax enactments generally.*

### Marginal Citations

- M1** Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)
- M2** Source—1970 s.286(2)
- M3** Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44
- M4** Source—1970 s.286(7)-(9)

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