



# Income Tax (Trading and Other Income) Act 2005

## 2005 CHAPTER 5

### PART 4 **U.K.**

#### SAVINGS AND INVESTMENT INCOME

### CHAPTER 8 **U.K.**

#### PROFITS FROM DEEPLY DISCOUNTED SECURITIES

##### *Deeply discounted securities*

#### 430 Meaning of “deeply discounted security” **U.K.**

- (1) The general rule is that a security is a “deeply discounted security” for the purposes of this Chapter if, as at the time it is issued, the amount payable on maturity or any other possible occasion of redemption (“A”) exceeds or may exceed the issue price by more than—

$$A \times 0.5 \% \times Y.$$

where Y is the number of years in the redemption period or 30, whichever is the lower.

- (2) If the redemption period is not a number of complete years, for the purposes of subsection (1) the incomplete year is expressed as twelfths, treating each complete month and any remaining part of a month as one-twelfth.
- (3) In this section “redemption period” means the period between the date of issue and the date of the occasion of redemption in question.

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- (4) Interest payable on an occasion of redemption is ignored in determining for the purposes of this section the amount payable on that occasion.
- (5) For the purposes of this section, in the case of an issue to which section 442 applies (securities issued in accordance with qualifying earn-out right), the issue price of the security is to be taken as the amount paid to acquire it (see section 442(2)).
- (6) The general rule in subsection (1) is subject to—  
 section 431 (excluded occasions of redemption),  
 section 432 (securities which are not deeply discounted securities),  
 sections 434 to 436 (securities issued in separate tranches),<sup>F1</sup> . . .  
 section 443(1) (strips of government securities) [<sup>F2</sup>, and  
 section 452A(1) (corporate strips).]

#### Textual Amendments

- F1** Word in s. 430(6) repealed (retrospectively) by Finance (No. 2) Act 2005 (c. 22), ss. 39, 70, Sch. 7 para. 25(2)(10), Sch. 11 Pt. 2(8)
- F2** Words in s. 430(6) added (retrospectively) by Finance (No. 2) Act 2005 (c. 22), s. 39, Sch. 7 para. 25(2)(10)

### 431 Excluded occasions of redemption **U.K.**

- (1) An occasion of redemption of a security other than maturity is ignored for the purposes of section 430(1) if the third-party option conditions or the commercial protection conditions are met.
- (2) The third-party option conditions are that—
- (a) the security may be redeemed on the occasion at the option of a person other than its holder,
  - (b) the security is issued to a person who is not connected with the issuer, and
  - (c) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might have been expected to accrue from the provision in accordance with which the security may be redeemed on the occasion.
- (3) The commercial protection conditions are that—
- (a) the security may be redeemed on the occasion as the result of an exercise of an option that is exercisable only on the occurrence of—
    - (i) an event adversely affecting the holder (see subsection (8)), or
    - (ii) a default by any person, and
  - (b) as at the time of the security's issue it appears unlikely that the option will be exercisable on the occasion.
- (4) Subsection (1) does not apply to an occasion just because the occasion coincides or may coincide with an occasion meeting the third-party option conditions or the commercial protection conditions.
- (5) If—
- (a) the only reason that a security is not a deeply discounted security is that an occasion on which it may be redeemed is ignored because the third-party option conditions are met, and

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- (b) at some time after its issue the security is acquired by, or its holder becomes, a person connected with the issuer,  
in relation to that time and later this Chapter applies as if the security were a deeply discounted security.
- (6) If a person (“P”) who is not connected with the issuer acquires—
  - (a) a security which is only a deeply discounted security because it was issued to a person connected with the issuer and so fails to meet the condition specified in subsection (2)(b), or
  - (b) a security within subsection (5),this Chapter applies in relation to P as if the security ceased to be a deeply discounted security on the acquisition.
- (7) For the purposes of the application of this section to a security, the question whether persons are connected is determined without regard to the security or any other security issued under the same prospectus.
- (8) In this section “event adversely affecting the holder”, in relation to a security, means an event the occurrence of which appears, as at the time of the security's issue, likely to have an adverse effect on the interests of its holder at the time of the event if there were no provision for redemption on its occurrence.

#### **432 Securities which are not deeply discounted securities** U.K.

- (1) The following are not deeply discounted securities—
  - (a) shares in a company,
  - (b) gilt-edged securities that are not strips,
  - (c) life assurance policies, and
  - (d) capital redemption policies.
- (2) An excluded indexed security (see section 433) is only a deeply discounted security if treated as such under section 431(5) (acquisition by a person connected with the issuer or holder becoming such a person).
- (3) In this section “capital redemption policies” has the same meaning as in Chapter 9 of this Part (see section 473(2)).
- (4) See also sections 434 to 436 (rules under which securities issued under the same prospectus on separate occasions may be treated as being, or as not being, deeply discounted securities).

#### **433 Meaning of “excluded indexed security”** U.K.

- (1) In this Chapter “excluded indexed security” means a security under the terms of which the amount payable on redemption is determined by applying to the amount for which the security was issued the percentage change (if any) over the security's redemption period in—
  - (a) the value of chargeable assets of a particular description, or
  - (b) an index of the value of such assets.
- (2) The fact that the terms under which the security is issued include a provision to the effect that the amount payable on its redemption must be at least a specified percentage

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of the amount for which it was issued only prevents it from falling within the definition in subsection (1) if that percentage exceeds 10%.

- (3) Interest payable on redemption is ignored in determining for the purposes of this section the amount payable on redemption.
- (4) In subsection (1) “redemption period” means—
  - (a) the period beginning with the date of issue and ending with the date of redemption, or
  - (b) a period which is or includes almost all that period and only differs from it for purposes connected with giving effect to a valuation in relation to rights or liabilities under the security.
- (5) An asset is a chargeable asset for the purposes of subsection (1) if a gain accruing to a person on its disposal would be a chargeable gain for the purposes of TCGA 1992 on the assumptions specified in subsection (6).
- (6) The assumptions are that—
  - (a) the asset is an asset of the person,
  - (b) the person is not entitled to the exemption conferred by section 100 of TCGA 1992 (exemption for authorised unit trusts etc.),
  - (c) disposal of the asset by the person would not be treated for income tax purposes as a disposal in the course of a trade, profession or vocation, and
  - (d) section 116(10) of TCGA 1992 is ignored (chargeable gains on subsequent disposals of qualifying corporate bonds acquired in reorganisations, conversions and reconstructions).
- (7) For the purposes of this section—
  - (a) neither the retail prices index nor any similar general index of prices published by the government of a territory or by an agent of such a government is an index of the value of chargeable assets, and
  - (b) “redemption”, in relation to a security, does not include its redemption on an occasion which is to be ignored under section 431(1) (excluded occasions of redemption).

#### **434 Securities issued in separate tranches: preliminary U.K.**

- (1) Sections 435 and 436 set out rules under which securities issued under the same prospectus on separate occasions may be treated as being, or as not being, deeply discounted securities.
- (2) If any of the securities in the original issue under the prospectus is a deeply discounted security—
  - (a) the rule in section 435 applies to securities in later issues under it, and
  - (b) the rule in section 436 does not apply to any securities issued under it.
- (3) If none of the securities in the original issue under the prospectus is a deeply discounted security, the rule in section 435 applies to securities in a later issue except where the rule in section 436 applies.

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**435 Securities issued in separate tranches: basic rule U.K.**

- (1) The rule in this section is that if securities in any of the issues made on separate occasions under the same prospectus are not deeply discounted securities, securities in any later issue under it are not deeply discounted securities, unless they are treated as such for one of the reasons specified in subsection (2).
- (2) The reasons are—
  - (a) that the securities were issued to a person connected with the issuer and so fail to meet the condition specified in section 431(2)(b), and
  - (b) that such a person has acquired or become the holder of the securities and so section 431(5) applies to them.

**436 Deeply discounted securities issued in separate tranches: nominal value rule U.K.**

- (1) This section only applies if some of the securities in one or more later issues under the same prospectus are deeply discounted securities (or are such securities if the rule in section 435 is ignored).
- (2) The rule in this section applies for any disposal or acquisition after the time when the condition specified in subsection (3) is first met.
- (3) The condition is that the aggregate nominal value as at a particular time of the securities within subsection (1) exceeds the aggregate nominal value as at that time of all the other securities issued under the prospectus at any time.
- (4) The rule is that all securities issued under the prospectus (including those issued after the time when the condition specified in subsection (3) is first met) are to be treated as deeply discounted securities and as having been acquired as such (whenever actually issued or acquired).
- (5) Subsection (6) applies where the question is whether a security held by a person who is not connected with the issuer is a deeply discounted security as a result of the rule in this section.
- (6) For the purpose of determining whether the rule in this section applies, securities that are only within subsection (1) for one of the reasons specified in section 435(2) are treated as not being within it.

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