



Corporation Tax Act 2009

2009 CHAPTER 4

PART 5

LOAN RELATIONSHIPS

CHAPTER 12

SPECIAL RULES FOR PARTICULAR KINDS OF SECURITIES

Derivatives

415 Loan relationships with embedded derivatives

- (1) This section applies if in accordance with generally accepted accounting practice a company treats the rights and liabilities under a loan relationship to which it is a party as divided between—
 - (a) rights and liabilities under a loan relationship (“the host contract”), and
 - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (2) The company is treated for the purposes of this Part as a party to a loan relationship whose rights and liabilities consist only of those of the host contract.
- (3) For the corresponding treatment of the rights and liabilities within subsection (1)(b), see section 585 (loan relationships with embedded derivatives).

416 Election for application of sections 415 and 585

- (1) This section applies if—
 - (a) a company is subject to old UKGAAP for a period of account,

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- (b) at the beginning of its first relevant period of account the company did not hold any assets (“relevant assets”) which it is not permitted under old UK GAAP to treat as mentioned in section 415(1),
 - (c) the company subsequently acquires one or more relevant assets (to which sections 415 and 585 do not apply because of the company being subject to old UK GAAP), and
 - (d) the company would have been permitted to treat the relevant assets as mentioned in section 415(1) if it had been subject to—
 - (i) international accounting standards, or
 - (ii) new UK GAAP.
- (2) The company may elect that this Part and Part 7 (derivative contracts) should apply as if sections 415 and 585 did apply.
 - (3) The election has effect in relation to all relevant assets held by the company including those subsequently acquired, except as provided in subsection (4).
 - (4) An election made on or after 12 March 2008 does not have effect in relation to any relevant assets in the case of which section 418 (loan relationships treated differently by connected debtor and creditor) applies.
 - (5) If an election is made under this section, sections 315 to 318 (adjustments on change of accounting policy) apply as if there were a change of accounting policy consisting of the company treating its relevant assets as mentioned in section 415(1) as from the date the election has effect.
 - (6) See also section 613(4) (which makes provision corresponding to subsection (5) for the purposes of Part 7).
 - (7) In this section—
 - “first relevant period of account”, in relation to a company, means the first period of account of the company beginning on or after 1 January 2005 (the first period in relation to which section 94A of FA 1996 (which is rewritten in section 415) had effect),
 - “old UK GAAP” means UK generally accepted accounting practice as it applied for periods of account beginning before 1 January 2005, and
 - “new UK GAAP” means UK generally accepted accounting practice as it applies for periods of account beginning on or after that date.
 - (8) Section 417 makes further provision about elections under this section.

417 Further provisions about elections under section 416

- (1) An election under section 416 must be made not later than 90 days after the acquisition of the relevant assets or, if there is more than one acquisition, the first of them.
- (2) The election is irrevocable.
- (3) The election has effect from the beginning of the period of account in which the first relevant asset is acquired.
- (4) In this section “relevant assets” has the same meaning as in section 416.

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418 Loan relationships [^{F1}involving connected debtor and creditor where debits exceed credits]

(1) This section applies if—

- (a) two connected companies are party to a loan relationship, one (“the debtor”) as debtor and the other (“the creditor”) as creditor, and
- (b) conditions [^{F2}A and B] are met.

[^{F3}(2) Condition A is that the rights under the loan relationship include provision by virtue of which the creditor company—

- (a) is or may become entitled, or
- (b) is or may be required,

to acquire (whether by conversion or exchange or otherwise) any shares in any company.

(3) Condition B is that—

- (a) the debits brought into account by the debtor under this Part in respect of the loan relationship for any accounting period, exceed
- (b) the credits brought into account (otherwise than as a result of this section) by the creditor in respect of the loan relationship for the corresponding accounting period or periods of the creditor.]

(5) The creditor is treated for the purposes of this Part as bringing into account for the corresponding accounting period or periods additional credits in respect of the loan relationship of an amount equal to the excess.

(6) But if the creditor is a party to the loan relationship as creditor during only part of the corresponding accounting period (or any of the corresponding periods), it is treated for the purposes of this Part as bringing into account for the period only such part of the excess as is just and reasonable.

[^{F4}(6A) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor's rights under the loan relationship to another person—

- (a) under a repo or stock lending arrangement, or
- (b) under a transaction which is treated as not involving any disposal as a result of section 26 of TCGA 1992 (mortgages and charges not to be treated as disposals).

(6B) For the purposes of this section the creditor is to be treated as continuing to be a party to the loan relationship even though the creditor has disposed of the creditor's rights under the loan relationship to another person if the disposal was made with the relevant avoidance intention.

(6C) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account for the purposes of this Part.]

(7) [^{F5}Sections 418A and 419 supplement] this section.

Textual Amendments

- F1** Words in s. 418 heading substituted (with effect in accordance with Sch. 30 para. 4(8) of the commencing Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(6\)](#)

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- F2** Words in s. 418(1)(b) substituted (with effect in accordance with Sch. 30 para. 4(8) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(2\)](#)
- F3** S. 418(2)(3) substituted for s. 418(2)-(4) (with effect in accordance with Sch. 30 para. 4(8) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(3\)](#)
- F4** S. 418(6A)-(6C) inserted (with effect in accordance with Sch. 30 para. 4(8) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(4\)](#)
- F5** Words in s. 418(7) substituted (with effect in accordance with Sch. 30 para. 4(8) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(5\)](#)

[^{F6}418A Cases involving host contract

- (1) This section applies where the debtor or the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as divided between—
 - (a) rights and liabilities under a loan relationship (“the host contract”), and
 - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (2) Where the debtor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(a) were to the host contract.
- (3) Where the creditor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as so divided, section 418 has effect as if the reference to the loan relationship in subsection (3)(b) were to the host contract.
- (4) In this section “ the debtor ” and “ the creditor ” have the same meaning as in section 418.]

Textual Amendments

- F6** S. 418A inserted (with effect in accordance with Sch. 30 para. 4(8) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 30 para. 4\(7\)](#)

419 Section 418: supplementary

- (1) References in section 418 to a company being a party to a loan relationship as debtor or creditor include a company which indirectly stands in the position of a debtor or creditor as respects the loan relationship by reference to a series of loan relationships or relevant money debts.
- (2) In subsection (1) “relevant money debt” means a money debt that would be a loan relationship if a company directly stood in the position of debtor or creditor.
- (3) For the purposes of section 418 an accounting period of the creditor corresponds with an accounting period of the debtor if—
 - (a) it coincides with it, or
 - (b) it is wholly or partly within it.
- (4) If a corresponding accounting period of the creditor does not coincide with that of the debtor, such apportionments as are just and reasonable are to be made for the purposes of section 418.

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- (5) Two companies are connected for the purposes of section 418 if their accounting results are reflected in the consolidated group accounts of a group of companies.
- (6) Subsection (5) does not affect the application of [F7 section 1122 of CTA 2010] (how to tell whether persons are connected).
- (7) In this section “the debtor” and “the creditor” have the same meaning as in section 418.

Textual Amendments

- F7** Words in s. 419(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 615** (with Sch. 2)

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Changes to legislation:

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