



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 5

#### LOAN RELATIONSHIPS

### CHAPTER 8

#### CONNECTED PARTIES RELATIONSHIPS: LATE INTEREST

##### **Modifications etc. (not altering text)**

- C1** Pt. 5 Chs. 6-8 modified (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 601**, 1184(1) (with [Sch. 2](#))
- C2** Pt. 5 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 990(5)**, 1184(1) (with [Sch. 2](#))

## **372 Introduction to Chapter**

- (1) This Chapter makes provision about the debits to be brought into account for the purposes of this Part in cases where certain conditions relating to interest that is not paid or is paid late are met and there is a connection between the parties to the loan relationship.
- (2) For those conditions and the rule that applies in those cases, see section 373 (late interest treated as not accruing until paid in some cases).
- (3) For the kinds of connections where the rule applies, see—
  - (a) section 374 (connection between debtor and person standing in position of creditor),
  - (b) section 375 (loans to close companies by participators etc),
  - (c) section 377 (party to loan relationship having major interest in other party),and

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(d) section 378 (loans by trustees of occupational pension schemes).

(4) For the meaning of “standing in the position of a creditor” in this Chapter, see section 379(1) (persons indirectly standing in the position of creditor).

### **373 Late interest treated as not accruing until paid in some cases**

- (1) Debits relating to interest payable under a company's debtor relationship are to be brought into account for the purposes of this Part on the assumption that the interest does not accrue until it is paid if—
  - (a) conditions A and B are met, and
  - (b) the case is within section 374, 375, 377 or 378.
- (2) Condition A is that the interest is not paid within the period of 12 months following the end of the accounting period in which it would be treated as accruing apart from subsection (1).
- (3) Condition B is that credits representing the full amount of the interest are not brought into account for the purposes of this Part in respect of the corresponding creditor relationship for any accounting period.
- (4) For the meaning of “corresponding creditor relationship” in cases where persons indirectly stand in the position of creditor, see section 379(2).
- (5) References in this Chapter to “the actual accrual period” are references to the accounting period in which the interest would be treated as accruing apart from subsection (1).

### **374 Connection between debtor and person standing in position of creditor**

- (1) The case to which this section applies is where there is for the actual accrual period a connection between—
  - (a) the company which has the debtor relationship, and
  - (b) a company [<sup>F1</sup>("C") ] standing in the position of creditor as respects the loan relationship  
<sup>F2</sup>and the condition in subsection (1A) is met.]
- <sup>F3</sup>(1A) The condition is that C is—
  - (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.]
- (2) Section 466 (companies connected for an accounting period) applies for the purposes of this section.
- <sup>F4</sup>(3) For the purposes of this section—
  - (a) “non-qualifying territory” has the meaning given by [<sup>F5</sup>section 173 of TIOPA 2010],
  - (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
  - (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.

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### Textual Amendments

- F1** Word in s. 374(1)(b) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 2\(2\)\(a\)](#)
- F2** Words in s. 374(1) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 2\(2\)\(b\)](#)
- F3** S. 374(1A) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 2\(3\)](#)
- F4** S. 374(3) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 2\(4\)](#)
- F5** Words in s. 374(3)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 127](#) (with [Sch. 9 paras. 1-9, 22](#))

## 375 Loans to close companies by participators etc

- (1) The case to which this section applies is where—
  - (a) there is a time in the actual accrual period when the close company conditions are met, and
  - (b) neither the CIS-based close company conditions nor the CIS limited partnership conditions are met

<sup>F6</sup>and, where subsection (4A) applies, the non-qualifying territory condition is met. ]
- (2) The close company conditions are that—
  - (a) the company which has the debtor relationship (“D”) is a close company, and
  - (b) a person (“C”) standing in the position of creditor as respects the loan relationship is—
    - (i) a participator in D,
    - (ii) the associate of a person who is participator in D,
    - (iii) a company of which a participator in D has control,
    - (iv) a company in which a participator in D has a major interest,
    - (v) a person who controls a company which is a participator in D,
    - (vi) the associate of a person within sub-paragraph (v), or
    - (vii) a company controlled by a person within sub-paragraph (v).
- (3) The CIS-based close company conditions are that—
  - (a) D is a CIS-based close company at all times when the close company conditions are met,
  - (b) C is not resident [<sup>F7</sup>for tax purposes] in a non-qualifying territory at any such time, and
  - (c) D is a small or medium-sized enterprise for the actual accrual period.
- (4) The CIS limited partnership conditions are that—
  - (a) the debt is one which is owed to, or to persons acting for, a CIS limited partnership,
  - (b) no member of that partnership is resident [<sup>F8</sup>for tax purposes] in a non-qualifying territory at any time in the actual accrual period,
  - (c) D has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) is met, and

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(d) D is a small or medium-sized enterprise for the actual accrual period.

[<sup>F9</sup>(4A) This subsection applies if C is a company; and the non-qualifying territory condition is that C is—

- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.]

(5) Section 376 applies for the interpretation of this section.

#### Textual Amendments

- F6** Words in s. 375(1) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 3\(2\)](#)
- F7** Words in s. 375(3)(b) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 3\(3\)](#)
- F8** Words in s. 375(4)(b) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 3\(3\)](#)
- F9** S. 375(4A) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 3\(4\)](#)

### 376 Interpretation of section 375

- (1) For the purposes of section 375 and this section, [<sup>F10</sup>Chapter 2 of Part 10 of CTA 2010 (meaning of “close company”) applies with the omission of section 442(a) (exclusion of non-resident companies)].
- (2) A person who is a participator in a company which controls another company is treated for the purposes of section 375 and this section as being a participator in that other company also.
- (3) Subject to that, in section 375 and this section “participator”, in relation to a company, means a person who is a participator in the company [<sup>F11</sup>within the meaning given by section 454 of CTA 2010], but not a person who is [<sup>F12</sup>such a participator] just because of being a loan creditor of the company.
- (4) Section 472 (meaning of “control”) applies for the purposes of section 375 and this section.
- (5) In section 375—
  - “CIS-based close company” means a company which would not be a close company apart from the rights and powers of one or more partners in a CIS limited partnership being attributed to another of the partners under [<sup>F13</sup>section 451(4) to (6) of CTA 2010 because of section 448(1)(a) of that Act],
  - “CIS limited partnership” means a limited partnership—
    - (a) which is a collective investment scheme, or
    - (b) which would be a collective investment scheme if it were not a body corporate,
  - “non-qualifying territory” has the meaning given by [<sup>F14</sup>section 173 of TIOPA 2010],

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[<sup>F15</sup> “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management, and ]

“small or medium-sized enterprise” has the meaning given by [<sup>F16</sup>section 172 of TIOPA 2010].

[<sup>F17</sup>(6) For the purposes of section 375, a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management.]

#### Textual Amendments

- F10** Words in s. 376(1) 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. 610(2)** (with [Sch. 2](#))
- F11** Words in s. 376(3) 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. 610(3)(a)** (with [Sch. 2](#))
- F12** Words in s. 376(3) 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. 610(3)(b)** (with [Sch. 2](#))
- F13** Words in s. 376(5) 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. 610(4)** (with [Sch. 2](#))
- F14** Words in s. 376(5) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 128(2)** (with [Sch. 9 paras. 1-9, 22](#))
- F15** Definition in s. 376(5) substituted (with effect in accordance with [Sch. 20 para. 9](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 20 para. 4(2)**
- F16** Words in s. 376(5) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 128(3)** (with [Sch. 9 paras. 1-9, 22](#))
- F17** S. 376(6) inserted (with effect in accordance with [Sch. 20 para. 9](#) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 20 para. 4(3)**

### 377 Party to loan relationship having major interest in other party

[<sup>F18</sup>(1)] The case to which this section applies is where—

- (a) a person (“C”) standing in the position of a creditor as respects the loan relationship is a company, <sup>F19</sup>...
- (b) there is a time in the actual accrual period when—
  - (i) the company which has the debtor relationship (“D”) has a major interest in C, or
  - (ii) C has a major interest in D [<sup>F20</sup>and
- (c) the condition in subsection (2) is met.]

[<sup>F21</sup>(2)] The condition is that C is—

- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.
- (3) For the purposes of this section—
- (a) “non-qualifying territory” has the meaning given by [<sup>F22</sup>section 173 of TIOPA 2010],

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- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.

#### Textual Amendments

- F18** S. 377(1): s. 377 renumbered as s. 377(1) (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 5\(2\)](#)
- F19** Word in s. 377(1)(a) omitted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 5\(3\)](#)
- F20** S. 377(1)(c) and word inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 5\(3\)](#)
- F21** S. 377(2) inserted (with effect in accordance with Sch. 20 para. 9 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 20 para. 5\(4\)](#)
- F22** Words in s. 377(3)(a) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 129](#) (with Sch. 9 paras. 1-9, 22)

### 378 Loans by trustees of occupational pension schemes

- (1) The case to which this section applies is where—
  - (a) the loan is one made by trustees of an occupational pension scheme, and
  - (b) condition A, B or C is met.
- (2) Condition A is that there is a time in the actual accrual period when the company which has the debtor relationship (“D”) is the employer of employees to whom the scheme relates.
- (3) Condition B is that there is a connection between D and such an employer for the actual accrual period.
- (4) Condition C is that a company is such an employer and there is a time in the actual accrual period when—
  - (a) D has a major interest in that company, or
  - (b) that company has a major interest in D.
- (5) In this section “occupational pension scheme” has the meaning given in section 150(5) of FA 2004.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

### 379 Persons indirectly standing in the position of creditor

- (1) For the purposes of this Chapter a person is treated as standing in the position of a creditor as respects a loan relationship if the person indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (2) If—

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- (a) a person (“C”) indirectly stands in the position of creditor as respects a loan relationship by reference to such a series of relationships or debts, and
  - (b) section 373 (late interest treated as not accruing until paid in some cases) applies in relation to the debtor relationship because of subsection (1), the reference in section 373(3) to the corresponding creditor relationship is a reference to C's creditor relationship.
- (3) In subsection (1) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

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