



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 16

#### FACTORING OF INCOME ETC

### CHAPTER 1

#### TRANSFERS OF INCOME STREAMS

#### **752 Application of Chapter**

- (1) This Chapter applies if—
  - (a) a company within the charge to corporation tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and
  - (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
  - (a) which (but for the transfer) would be charged to corporation tax as income of the transferor, or
  - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of corporation tax.
- (3) Despite subsection (1)(b), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of subsection (1)(b) the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Section 753 makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see—
  - (a) section 754 (amount otherwise taxed), and

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- (b) section 755 (transfer by way of security).
- (6) Section 756 makes special provision about transfers of partnership shares.
- (7) Section 757 contains supplementary provisions.

### **753 Value of transferred income stream treated as income**

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts—
  - (a) would have been chargeable to corporation tax, or
  - (b) would have been brought into account in calculating any profits for the purposes of corporation tax,
 but for the transfer of the right to relevant receipts.
- (2) The relevant amount is—
  - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
  - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under subsection (1) is to be treated as arising—
  - (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
  - (b) otherwise, in the period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (4) But if at any time it becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (3) as arising in an accounting period of the transferor, the income is to that extent to be treated as arising immediately before that time.

### **754 Exception: amount otherwise taxed**

This Chapter does not apply if and to the extent that the income under section 753(1) is (apart from this Chapter)—

- (a) charged to tax as income of the transferor,
- (b) brought into account as income in calculating the profits of the transferor, or
- (c) brought into account under CAA 2001.

### **755 Exception: transfer by way of security**

- (1) This Chapter does not apply if—

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- (a) the consideration for the transfer is the advance under a type 1 finance arrangement, and
  - (b) the transferor is, or is a member of a partnership which is, the borrower in relation to the arrangement.
- (2) This Chapter does not apply if—
- (a) the consideration for the transfer is the advance under a type 2 finance arrangement or a type 3 finance arrangement, and
  - (b) the transferor is a member of the partnership which receives that advance under the arrangement.
- (3) In this section—
- “type 1 finance arrangement” has the meaning given for the purposes of Chapter 2 by section 758,
  - “type 2 finance arrangement” has the meaning given for the purposes of Chapter 2 by section 763, and
  - “type 3 finance arrangement” has the meaning given for the purposes of Chapter 2 by section 767.

## 756 Partnership shares

- (1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in the transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) <sup>F1</sup>....

<sup>F2</sup>(2) .....

<sup>F2</sup>(3) .....

### Textual Amendments

**F1** Words in *s. 756(1)* omitted (with effect in accordance with Sch. 17 para. 27(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 27\(2\)](#)

**F2** *S. 756(2)(3)* omitted (with effect in accordance with Sch. 17 para. 27(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 27\(3\)](#)

## 757 Interpretation of Chapter

- (1) For the purposes of this Chapter—
- (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land,
  - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence, and
  - (c) the grant or disposal of an interest in intellectual property (within the meaning of section 712(3) of CTA 2009) which constitutes a pre-FA 2002 asset (within the meaning of section 881 of that Act) is to be regarded as a transfer of that intellectual property.
- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.

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- (3) In this Chapter—
- (a) references to a transfer include sale, exchange, gift and assignment and any other arrangement which equates in substance to a transfer, and
  - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment, to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.

## [<sup>F3</sup>CHAPTER 1A

### DISPOSALS OF INCOME STREAMS THROUGH PARTNERSHIPS

#### Textual Amendments

**F3** Pt. 16 Ch. 1A inserted (with effect in accordance with Sch. 17 para. 28(2) of the amending Act) by Finance Act 2014 (c. 26), **Sch. 17 para. 28(1)**

#### 757A Application of Chapter

- (1) This Chapter applies if directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a company within the charge to corporation tax (“the transferor”) and another person (“the transferee”)—
- (a) there is, or is in substance, a disposal of a right to relevant receipts by the transferor to the transferee,
  - (b) the disposal is effected (wholly or partly) by or through a partnership (“the relevant partnership”),
  - (c) at any time—
    - (i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
    - (ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
  - (d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.
- (2) In subsection (1)(a) the reference to a disposal of a right to relevant receipts includes anything constituting a disposal of such a right for the purposes of TCGA 1992.
- (3) For the purposes of subsection (1)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).
- (4) For the purposes of subsection (1)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.
- (5) For the purposes of subsection (1)(c) a partnership is “associated” with the relevant partnership if—
- (a) it is a member of the relevant partnership, or

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- (b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).
- (6) In subsections (1)(c) and (4) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.
- (7) In this Chapter—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
  - “partnership” includes a limited liability partnership whether or not section 1273(1) of CTA 2009 applies in relation to it,
  - “relevant receipts” means any income—
    - (a) which (but for the disposal) would be charged to corporation tax as income of the transferor (whether directly or as a member of a partnership), or
    - (b) which (but for the disposal) would be brought into account as income in calculating profits of the transferor (whether directly or as a member of a partnership) for corporation tax purposes, and
  - “tax advantage” means a tax advantage, as defined in section 1139, in relation to income tax or the charge to corporation tax on income.

#### **757B Relevant amount to be treated as income**

- (1) The relevant amount is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts—
- (a) would have been chargeable to corporation tax as income of the transferor, or
  - (b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes,
- but for the disposal.
- (2) In subsection (1) “the relevant amount” is to be read in accordance with section 753(2) and section 753(3) and (4) applies for the purpose of determining when income under subsection (1) is treated as arising.
- (3) For this purpose, in section 753(2) to (4) references to the transfer of the right are to be read as references to the disposal of the right.
- (4) If, apart from this subsection and section 779B(3)—
- (a) both this Chapter and Chapter 4 would apply in relation to the disposal, and
  - (b) Chapter 4 would give a greater amount of income of the transferor chargeable to corporation tax,
- this Chapter is not to apply in relation to the disposal.]

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## CHAPTER 2

### FINANCE ARRANGEMENTS

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

- C1** Pt. 16 Ch. 2 restricted by Finance Act 2004 (c. 12), s. 196I(5)(6) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 15](#) (with [Sch. 13 Pt. 4](#)))
- C2** Pt. 16 Ch. 2 restricted by Finance Act 2004 (c. 12), s. 196G(2)(3) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 1](#) (with [Sch. 13 Pt. 2](#)))

#### *Type 1 arrangements*

#### **758 Type 1 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.
- (2) Condition A is that under the arrangement—
- a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
  - the borrower or a person connected with the borrower makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
  - the lender or a person connected with the lender is entitled to payments in respect of the security.
- [<sup>F4</sup>(2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.]
- (3) Condition B is that in accordance with generally accepted accounting practice—
- the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - the payments reduce the amount of the financial liability.
- (4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.

#### Textual Amendments

- F4** S. 758(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 38](#)

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## **759 Certain tax consequences not to have effect**

- (1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).
- (2) The arrangement is not to have that effect.
- (3) The relevant effect is that—
  - (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to corporation tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
  - (c) the borrower or a person connected with the borrower becomes entitled to an income deduction.
- (4) But if the borrower is a partnership the relevant effect is that—
  - (a) an amount of income on which a member of the partnership would otherwise have been charged to corporation tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a member of the partnership is not so brought into account, or
  - (c) a member of the partnership becomes entitled to an income deduction.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.
- (6) An income deduction is—
  - (a) a deduction in calculating income for corporation tax purposes, or
  - (b) a deduction from total profits.

## **760 Payments treated as borrower's income**

- (1) This section applies if—
  - (a) a type 1 finance arrangement would not have the relevant effect (ignoring section 759(2)),
  - (b) that arrangement would not have the corresponding income-tax effect (ignoring section 809BZB(2) of ITA 2007), and
  - (c) the borrower is—
    - (i) a company within the charge to corporation tax, or
    - (ii) a partnership at least one member of which is a company within the charge to corporation tax.
- (2) The payments mentioned in section 758(2)(c) must be treated for corporation tax purposes as income of the borrower payable in respect of the security.
- (3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.
- (4) Subsections (3) to (6) of section 759 (meaning of relevant effect) apply for the purposes of this section as for those of that.

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- (5) In subsection (1)(b) “the corresponding income-tax effect” means the relevant effect as defined by section 809BZB(3) to (6) of ITA 2007 (provision for income tax corresponding to section 759(3) to (6)).

## **761 Deemed loan relationship if borrower is a company**

- (1) This section applies if—
- (a) there is a type 1 finance arrangement,
  - (b) the borrower is a company, and
  - (c) either—
    - (i) the arrangement is prevented by section 759 from having the relevant effect in relation to the company, or
    - (ii) section 760 applies to the company.
- (2) For the purposes of Part 5 of CTA 2009 (loan relationships)—
- (a) the advance is treated in relation to the company as a money debt owed by it, and
  - (b) the arrangement is treated in relation to the company as a loan relationship of the company (as a debtor relationship).
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts as a finance charge in respect of the advance is treated as interest payable under the loan relationship.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

## **762 Deemed loan relationship if borrower is partnership with corporate member**

- (1) This section applies if—
- (a) there is a type 1 finance arrangement,
  - (b) the borrower is a partnership, and
  - (c) either—
    - (i) the arrangement is prevented by section 759 from having the relevant effect in relation to a company that is a member of the partnership, or
    - (ii) section 760 applies to the partnership (in which event “the company” in subsections (2) and (3) means the company within the charge to corporation tax that is a member of the partnership).
- (2) For the purposes of Part 5 of CTA 2009 (loan relationships)—
- (a) the advance is treated in relation to the company as a money debt owed by the partnership, and



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- (b) the arrangement is treated in relation to the company as a loan relationship of the partnership (as a debtor relationship).
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts, or the partnership's accounts, as a finance charge in respect of the advance is treated as interest payable under the loan relationship by the partnership.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
  - (a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

#### *Type 2 arrangements*

### **763 Type 2 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
  - (a) under the arrangement a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor [<sup>F5</sup>or a person connected with the transferor] is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (c) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (d) there is a relevant change in relation to the partnership (see section 764), and
  - (e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.

[<sup>F6</sup>(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.]

- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

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### Textual Amendments

- F5** Words in s. 763(2)(b) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 39\(2\)](#)
- F6** S. 763(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 39\(3\)](#)

## 764 Relevant change in relation to partnership

- (1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.
- (2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition B is that—
  - (a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.
- (4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—
  - (a) if it is condition A that is met, to the person who becomes a member of the partnership, and
  - (b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

## 765 Certain tax consequences not to have effect

- (1) This section applies if—
  - (a) there is a type 2 finance arrangement, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) In such a case—
  - (a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to the transferor [<sup>F7</sup>or the person connected with the transferor] as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly the finance arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
  - (a) an amount of income on which the transferor [<sup>F7</sup>or the person connected with the transferor] would otherwise have been charged to corporation tax is not so charged,

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- (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the transferor [<sup>F7</sup>or the person connected with the transferor] is not so brought into account, or
  - (c) the transferor [<sup>F7</sup>or the person connected with the transferor] becomes entitled to an income deduction.
- (4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 763(2)(e) were payable to the partnership before the relevant change in relation to it occurred.
- (5) An income deduction is—
- (a) a deduction in calculating income for corporation tax purposes, or
  - (b) a deduction from total profits.

#### Textual Amendments

**F7** Words in s. 765 inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 40](#)

## 766 Deemed loan relationship

- (1) This section applies if—
- (a) there is a type 2 finance arrangement, and
  - (b) the transferor is a company within the charge to corporation tax.
- (2) In relation to the company—
- (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
  - (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the company under the transaction.
- (4) The reference in subsection (3) to the partnership's accounts includes a reference to the transferor's accounts.
- (5) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 763(2)(e) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

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### *Type 3 arrangements*

#### **767 Type 3 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
  - (a) a partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
  - (b) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (c) there is a relevant change in relation to the partnership (see section 764), and
  - (d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.
- [<sup>F8</sup>(2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.]
- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

#### **Textual Amendments**

**F8** S. 767(2A) inserted (with effect in accordance with Sch. 13 para. 42 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 41](#)

#### **768 Certain tax consequences not to have effect**

- (1) This section applies if—
  - (a) there is a type 3 finance arrangement, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) The relevant effect is that—
  - (a) an amount of income on which a relevant member would otherwise have been charged to corporation tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a relevant member is not so brought into account, or
  - (c) a relevant member becomes entitled to an income deduction.
- (3) A relevant member is a person who—

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- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) If this section applies—
- (a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly the finance arrangement is not to have the relevant effect.
- (5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 767(2)(d) were payable to the partnership before the relevant change in relation to it occurred.
- (6) An income deduction is—
- (a) a deduction in calculating income for corporation tax purposes, or
  - (b) a deduction from total profits.

## **769 Deemed loan relationship**

- (1) This section applies if—
- (a) there is a type 3 finance arrangement, and
  - (b) a relevant member is a company within the charge to corporation tax.
- (2) In relation to the company—
- (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
  - (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the partnership under the transaction.
- (4) The reference in subsection (3) to the partnership's accounts includes a reference to the accounts of any relevant member.
- (5) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 767(2)(d) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.
- (6) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.

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## *Exceptions*

### **770 Exceptions: preliminary**

- (1) Sections 771 to 773 make provision for finance arrangement codes not to apply in certain circumstances.
- (2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—
  - (a) sections 758 to 762 (type 1 arrangements),
  - (b) sections 763 to 766 (type 2 arrangements), and
  - (c) sections 767 to 769 (type 3 arrangements).

### **771 Exceptions**

- (1) A finance arrangement code does not apply if the whole of the advance under the arrangement—
  - (a) is charged to tax on a relevant person as an amount of income,
  - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
  - (c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.
- (2) Treat subsection (1)(c) as not met if—
  - (a) the receipt gives rise, or proceeds give rise, to a balancing charge, and
  - (b) the amount of the balancing charge is limited by any provision of CAA 2001.
- (3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—
  - (a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or
  - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.
- (4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).
- (5) A finance arrangement code does not apply so far as—
  - (a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or
  - (b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).
- (6) A finance arrangement code does not apply so far as Chapter 6 of Part 6 of CTA 2009, Part 10A of ITA 2007 or Chapter 4 of Part 4 of TCGA 1992 has effect in relation to the arrangement (alternative finance arrangements).
- (7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.

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- (8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.
- (9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.
- (10) Section 772 defines a relevant person for the purposes of this section.

## **772 Exceptions: relevant person**

- (1) This section defines a relevant person for the purposes of section 771.
- (2) If (apart from sections 771 and 773) sections 758 to 762 would apply, each of the following is a relevant person—
  - (a) the borrower, and
  - (b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.
- (3) If (apart from sections 771 and 773) sections 763 to 766 would apply, the transferor is a relevant person.
- (4) If (apart from sections 771 and 773) sections 767 to 769 would apply, a relevant member as there defined is a relevant person.
- (5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 1122 (meaning of “connected”) are connected with the borrower.

## **773 Power to make further exceptions**

- (1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.
- (2) The regulations may amend sections 771 and 772.
- (3) The power to make regulations includes—
  - (a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),
  - (b) power to make different provision for different cases or different purposes, and
  - (c) power to make incidental, supplemental, consequential and transitional provision and savings.

### *Supplementary*

## **774 Accounts**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.

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- (3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.
- (4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

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

- C3** Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 1](#) (with [Sch. 13 Pt. 2](#)))
- C4** S. 774 applied by Finance Act 2004 (c. 12), s. 196L(4) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 15](#) (with [Sch. 13 Pt. 4](#)))

**775 Arrangements**

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

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

- C3** Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 1](#) (with [Sch. 13 Pt. 2](#)))
- C5** S. 775 applied by Finance Act 2004 (c. 12), s. 196L(4) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 13 para. 15](#) (with [Sch. 13 Pt. 4](#)))

**776 Assets**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a person receiving an asset includes—
  - (a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and
  - (b) a reference to the discharge (in whole or part) of a liability of the person.
- (3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.
- (4) A reference to payments in respect of an asset includes—
  - (a) a reference to payments in respect of another asset substituted for it under the arrangement, and
  - (b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it.



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

- C3** Ss. 774-776 applied by Finance Act 2004 (c. 12), s. 196J(5) (as inserted (with effect in accordance with Sch. 13 para. 3 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 1** (with Sch. 13 Pt. 2))
- C6** S. 776(2)(4) applied by Finance Act 2004 (c. 12), s. 196L(4)(6) (as inserted (with effect in accordance with Sch. 13 para. 17 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 13 para. 15** (with Sch. 13 Pt. 4))

## CHAPTER 3

### LOAN OR CREDIT TRANSACTIONS

#### 777 Loan or credit transaction defined

- (1) This section defines a loan or credit transaction for the purposes of sections 778 and 779.
- (2) A transaction is a loan or credit transaction if it is—
  - (a) effected with reference to the lending of money or the varying of the terms on which money is lent, or
  - (b) effected with a view to enabling or facilitating an arrangement concerning the lending of money or the varying of the terms on which money is lent.
- (3) A transaction is a loan or credit transaction if it is—
  - (a) effected with reference to the giving of credit or the varying of the terms on which credit is given, or
  - (b) effected with a view to enabling or facilitating an arrangement concerning the giving of credit or the varying of the terms on which credit is given.
- (4) Subsection (2) has effect whether the transaction is effected—
  - (a) between the lender and the borrower,
  - (b) between either of them and a person connected with the other, or
  - (c) between a person connected with one and a person connected with the other.
- (5) Subsection (3) has effect whether the transaction is effected—
  - (a) between the creditor and the debtor,
  - (b) between either of them and a person connected with the other, or
  - (c) between a person connected with one and a person connected with the other.

#### 778 Certain payments treated as interest

- (1) This section applies if a loan or credit transaction provides for a payment which is not interest but is—
  - (a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income, or
  - (b) an annuity or other annual payment which is from a source in the United Kingdom and chargeable to corporation tax under [F9]Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.]

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- (2) The payment must be treated for the purposes of the Corporation Tax Acts as if it were a payment of interest.

#### Textual Amendments

**F9** Words in s. 778(1)(b) substituted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **39(5)** (with reg. 32)

### 779 Tax charged on income transferred

- (1) This section applies if—
- (a) under a loan or credit transaction a company transfers income arising from property,
  - (b) the company is not, as a result of Chapter 2 (finance arrangements), chargeable to corporation tax on the income transferred, and
  - (c) the company is within the charge to corporation tax.
- (2) In such a case, the company which transfers the income is charged to corporation tax, under the charge to corporation tax on income, on an amount equal to the income transferred.
- (3) This section does not prejudice the liability of any other person to tax.
- (4) For the purposes of this section a company transfers income if it surrenders, waives or forgoes it.
- (5) Subsection (6) applies for the purposes of this section if—
- (a) credit is given for the purchase price of property, and
  - (b) the rights attaching to the property are such that the buyer's rights to income from the property are suspended or restricted during the life of the debt.
- (6) The buyer must be treated as surrendering income of an amount equal to the income the buyer in effect forgoes by obtaining the credit.
- (7) For the purposes of this section an amount of income payable subject to deduction of income tax must be taken as the amount before deduction of tax.

## [<sup>F10</sup>CHAPTER 4

### DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

#### Textual Amendments

**F10** [Pt. 16 Ch. 4](#) inserted (with effect in accordance with Sch. 17 para. 29(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 para. 29\(1\)](#)

### 779A Application of Chapter

- (1) This Chapter applies if conditions A and B are met.

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- (2) Condition A is that directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a company within the charge to corporation tax (“the transferor”) and another person (“the transferee”)—
- (a) there is, or is in substance, a disposal of an asset (“the transferred asset”) by the transferor to the transferee,
  - (b) the disposal is effected (wholly or partly) by or through a partnership (“the relevant partnership”),
  - (c) at any time—
    - (i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
    - (ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and
  - (d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.
- (3) In subsection (2)(a) the reference to a disposal of an asset includes anything constituting a disposal of an asset for the purposes of TCGA 1992.
- (4) For the purposes of subsection (2)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).
- (5) For the purposes of subsection (2)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.
- (6) For the purposes of subsection (2)(c) a partnership is “associated” with the relevant partnership if—
- (a) it is a member of the relevant partnership, or
  - (b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).
- (7) In subsections (2)(c) and (5) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.
- (8) Condition B is that it is reasonable to assume that, had the transferred asset instead been disposed of directly by the transferor to the transferee, the relevant amount (or any part of it)—
- (a) would have been chargeable to corporation tax as income of the transferor, or
  - (b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes.
- (9) In this Chapter “the relevant amount” means the amount of the consideration received by the transferor for the disposal.
- (10) If the transferor receives—
- (a) no consideration for the disposal, or
  - (b) consideration which is substantially less than the market value of the transferred asset,
- assume for the purposes of subsection (9) that the transferor receives consideration of an amount equal to the market value of the transferred asset.

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- (11) In subsection (10) references to the market value of the transferred asset are to that value at the time of the disposal.
- (12) In this Chapter—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
  - “partnership” includes a limited liability partnership whether or not section 1273(1) of CTA 2009 applies in relation to it, and
  - “tax advantage” means a tax advantage, as defined in section 1139, in relation to income tax or the charge to corporation tax on income.

### **779B Relevant amount to be treated as income**

- (1) The relevant amount is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which it—
- (a) would have been chargeable to corporation tax as income of the transferor, or
  - (b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes,
- as mentioned in section 779A(8).
- (2) Section 753(3) and (4) applies for the purpose of determining when income under subsection (1) is treated as arising (reading references to the transfer of the right as references to the disposal of the transferred asset).
- (3) If, apart from this subsection and section 757B(4)—
- (a) both this Chapter and Chapter 1A would apply in relation to the disposal, and
  - (b) Chapter 1A would give the same amount, or a greater amount, of income of the transferor chargeable to corporation tax,
- this Chapter is not to apply in relation to the disposal.]

**Status:**

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**Changes to legislation:**

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