



# Finance (No.2) Act 1987

## 1987 CHAPTER 51

### PART I

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER III

#### GENERAL

##### *Provisions having an overseas element*

#### **67 Double taxation relief: interest on certain overseas loans.**

- (1) Section 65 of the Finance Act 1982 (restriction of double taxation relief in relation to interest on certain overseas loans) shall be amended in accordance with this section.
- (2) In subsection (1), in paragraph (a) the words “in a territory” shall be omitted and at the end of that subsection there shall be added “and for the purpose only of determining whether the condition in paragraph (b) above is fulfilled in a case where the lender has in fact incurred no expenditure related to the earning of the foreign loan interest, it shall be assumed that he has incurred such expenditure”.
- (3) After subsection (1) there shall be inserted the following subsection—

“(1A) In subsection (1) above “interest”, in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan; and any reference in this section to foreign loan interest shall be construed accordingly.”
- (4) In subsection (4) for paragraph (b) there shall be substituted—

“(b) the amount of tax exceeds—

  - (i) the amount of credit which, by virtue of Chapter II of Part XVIII of the Taxes Act (but disregarding subsection (5)

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below), is allowed for that foreign tax against income tax or corporation tax, or

- (ii) if it is less, 15 per cent. of the foreign loan interest, computed without regard to any increase or reduction under this section”.

(5) For subsection (5) there shall be substituted the following subsections—

“(5) Where this section applies, the amount of the credit for foreign tax referred to in subsection (1)(c) above which, in accordance with Chapter II of Part XVIII of the Taxes Act, is to be allowed against income tax or corporation tax—

- (a) shall be limited by treating the amount of the foreign loan interest (as increased or reduced under subsection (2) or subsection (4) above) as reduced (or further reduced) for the purposes of that Chapter by an amount equal to so much of the lender’s financial expenditure in relation to the loan concerned as is properly attributable to the period for which the interest is paid; and
- (b) shall not exceed 15 per cent. of the foreign loan interest, computed without regard to paragraph (a) above or to any increase under subsection (2) or any reduction under subsection (4) above.

(5A) For the purposes of this section the lender’s financial expenditure in relation to a loan is the aggregate of—

- (a) the financial expenses (consisting of interest or similar sums) incurred by the lender in or in connection with the provision of the loan, so far as those expenses consist of payments which either are charges on income for the purposes of corporation tax or are deductible in computing profits of the lender which are brought into charge to income tax or corporation tax; and
- (b) where the loan is financed by the issue of securities at a discount by the lender, so much of the amount of the discount as either constitutes such a charge as is mentioned in paragraph (a) above or is deductible as mentioned in that paragraph; and
- (c) so much as it is just and reasonable to attribute to the loan of any interest or other return forgone by a person connected or associated with the lender in connection with the provision of funds to the lender, either interest free or in other circumstances more favourable to the lender than if the parties were at arm’s length; and
- (d) any other sum, whether paid by way of refund of tax or interest or by way of commission, which—
  - (i) is paid by the lender or a person connected or associated with him;
  - (ii) is paid directly or indirectly to the borrower or a person connected or associated with him;
  - (iii) is deductible as mentioned in paragraph (a) above;
  - (iv) would not, apart from this paragraph, be taken into account in determining the amount of the foreign loan interest; and
  - (v) it is reasonable to regard as referable to the loan or the foreign loan interest (or both).

(5B) In a case where the amount of the lender’s financial expenditure in relation to a loan is not readily ascertainable, that amount shall be taken, subject to

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subsection (5C) below, to be such sum as it is just and reasonable to attribute to the financing of the loan, having regard, in particular, to any market rates of interest by reference to which the rate of interest on the loan is determined.

- (5C) The Board may by regulations supplement subsection (5B) above—
- (a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in that subsection; and
  - (b) by making provision with respect to the determination of market rates of interest for the purposes of that subsection;
- and any such regulations may make different provision for different cases.
- (5D) Regulations under subsection (5C) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5E) For the purposes of this section—
- (a) section 533 of the Taxes Act (connected persons) applies; and
  - (b) subsection (10) of section 494 of that Act (associated persons) applies as it applies for the purposes of that section.”
- (6) Where the loan on which the foreign loan interest is payable was made pursuant to an agreement entered into before 1st April 1987, this section does not apply in relation to interest payable before 1st April 1989 but, subject thereto, this section (including the power to make regulations conferred by subsection (5) above) applies in relation to interest payable on or after 1st April 1987.