

Status: Point in time view as at 01/04/2009.

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Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER II

TRANSFERS OF SECURITIES

Miscellaneous provisions relating to securities

736 Company dealing in securities: distribution materially reducing value of holding.

F1

Textual Amendments

F1 S. 736 omitted (with effect in accordance with s. 66(7) of the repealing Act) by virtue of [Finance Act 2008 \(c. 9\), s. 66\(1\)\(d\)](#)

[^{F2}736A Manufactured dividends and interest.

Schedule 23A to this Act shall have effect in relation to certain cases where under a contract or other arrangements for the transfer of shares or other securities a person is required to pay to the other party an amount representative of a dividend or payment of interest on the securities.]

Textual Amendments

F2 S. 736A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), [s. 58\(1\)](#) (with effect as mentioned in [s. 58\(3\)](#) in relation to payments made on or after such day as may be specified: [26.2.1992](#) specified for certain

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purposes by S.I. 1992/173, **reg. 2(a)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2, 3, 4**; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2, 3(a), 4(1)**

[^{F3}736B Deemed manufactured payments in the case of stock lending arrangements.

- (1) This section applies where—
- (a) any interest on securities transferred by the lender under a stock lending arrangement is paid, as a consequence of the arrangement, to a person other than the lender; and
 - (b) no provision is made for securing that the lender receives payments representative of that interest.
- (2) Where this section applies, Schedule 23A and the provisions for the time being contained in any regulations under that Schedule [^{F4}, and [^{F5}Chapter 9 of Part 6 of CTA 2009] (loan relationships: manufactured interest),] shall apply [^{F6}for corporation tax purposes][^{F7}, subject to subsection (2A) below,] as if—
- (a) the borrower were required under the stock lending arrangement to pay the lender an amount representative of the interest mentioned in subsection (1) (a) above;
 - (b) a payment were made by the borrower in discharge of that requirement; and
 - (c) that payment were made on the same date as the payment of the interest of which it is representative.

[The borrower is not entitled, by virtue of anything in Schedule 23A or any provision ^{F8}(2A) of regulations under that Schedule, or otherwise—

- (a) to any deduction in computing profits or gains for the purposes of ^{F9}. . . corporation tax, or
- (b) to any deduction against ^{F10}. . . total profits,

in respect of any such deemed requirement or payment as is provided for by subsection (2) above.

Where the borrower is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by this subsection.]

- (3) In this section—
- “interest” includes dividends; and
- “stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act.

[See section 736D for provision treating certain arrangements as stock lending ^{F11}(4) arrangements for the purposes of this section.]]

Textual Amendments

- F3** S. 736B inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 3**; S.I. 1997/991, **art. 2**
- F4** Words in s. 736B(2) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 171(2)(a)** (with Sch. 2)
- F5** Words in s. 736B(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 215** (with Sch. 2 Pts. 1, 2)
- F6** Words in s. 736B(2) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 171(2)(b)** (with Sch. 2)

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- F7** Words in s. 736B(2) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), s. 84(2)
- F8** S. 736B(2A) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), s. 84(3)
- F9** Words in s. 736B(2A)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(a), Sch. 3 Pt. 1 (with Sch. 2)
- F10** Words in s. 736B(2A)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(b), Sch. 3 Pt. 1 (with Sch. 2)
- F11** S. 736B(4) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(1)

Modifications etc. (not altering text)

- C1** S. 736B modified (19.7.2006) by Finance Act 2006 (c. 25), s. 139(1)(3)
- C2** S. 736B(2A) applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 541(2) (with Sch. 2 Pts. 1, 2)

[^{F12}736C] Deemed interest: cash collateral under stock lending arrangements

- (1) This section applies where—
- the borrower under a stock lending arrangement is treated under section 736B(2) as paying under that arrangement an amount representative of interest on any securities (“the relevant securities”),
 - an amount of money (“cash collateral”) is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,
 - the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and
 - the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage.
- (2) Where this section applies—
- the [^{F13}Corporation Tax Acts] are to apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and
 - the amount of the interest is calculated in accordance with the following provisions of this section (see, in particular, subsections (3) to (7)).
- (3) The interest is treated for the purposes of the [^{F13}Corporation Tax Acts] as if it were received on the date (“the return date”) on which the borrower transfers the relevant securities back to the lender.
- (4) The interest is treated for the purposes of the [^{F13}Corporation Tax Acts] as if it were payable in respect of the period (“the interest period”)—
- beginning with the date on which the lender transfers the relevant securities to the borrower, and
 - ending with the return date.
- (5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.

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- (6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—
- (a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and
 - (b) in any other case, the amount of the cash collateral as at the return date.
- (7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.
- (8) ^{F14}
- (9) If the borrower is a company within the charge to corporation tax—
- (a) the interest which the borrower is treated as receiving is treated for the purposes of [^{F15}Part 5 of CTA 2009] (loan relationships) as payable to it on a money debt,
 - (b) that money debt is treated for those purposes as a relationship to which [^{F16}Chapter 2 of Part 6 of that Act applies (relevant non-lending relationships)], and
 - (c) the credits to be brought into account for those purposes in respect of the interest must be determined using an amortised cost basis of accounting.
- (10) The fact that the borrower is treated as receiving an amount of interest is not to be taken as implying that the interest is payable by the lender or any other person.
- (11) For the purposes of this section—
- “money” includes money expressed in a currency other than sterling,
- “stock lending arrangement” and “securities” have the same meanings as in section 263B of the 1992 Act,
- “tax advantage” has the meaning given by [^{F17}section 840ZA].
- (12) For the purposes of this section—
- (a) any reference to the transfer of securities back has the same meaning as in section 263B of the 1992 Act (see, in particular, sections 263B(5) and 263C(1) of that Act), but
 - (b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as if he transfers them back on the date on which it becomes so apparent.
- (13) For the purposes of this section it does not matter—
- (a) whether the cash collateral is payable by the borrower or by any other person,
 - (b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement,
 - (c) whether collateral in another form is also provided in connection with the stock lending arrangement.
- [See section 736D—
- ^{F18}(14) (a) for provision treating certain arrangements as stock lending arrangements for the purposes of this section, and
- (b) for provision treating certain amounts as cash collateral for those purposes.]]

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Textual Amendments

- F12** S. 736C inserted (with effect in accordance with Sch. 6 para. 3(2)-(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 3(1)**
- F13** Words in s. 736C(2)(a)(3)(4) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 172(2)** (with Sch. 2)
- F14** S. 736C(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 172(3), **Sch. 3 Pt. 1** (with Sch. 2)
- F15** Words in s. 736C(9)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 216(a)** (with Sch. 2 Pts. 1, 2)
- F16** Words in s. 736C(9)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 216(b)** (with Sch. 2 Pts. 1, 2)
- F17** S. 736C(11): words in definition of "tax advantage" substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 172(4)** (with Sch. 2)
- F18** S. 736C(14) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 4(2)**

[^{F19}736D] Quasi-stock lending arrangements and quasi-cash collateral

- (1) In this section “quasi-stock lending arrangement” means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—
- a person (“the lender”) transfers securities to another person (“the borrower”), and
 - a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person,
- and it does not matter whether the person on whom that requirement is imposed is the borrower or any other person.
- (2) In this section “quasi-cash collateral”, in relation to any stock lending arrangement or quasi-stock lending arrangement, means—
- any money which is payable for a relevant purpose, plus
 - any other property which is transferable for a relevant purpose.
- (3) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—
- the lender under the stock lending arrangement or quasi-stock lending arrangement, or
 - a person connected with that lender,
- for the purpose of securing the discharge of the requirement to transfer any or all of the securities, or any other property, back to that lender or any other person.
- (4) For the purposes of sections 736B and 736C, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.
- (5) For the purposes of section 736C, in relation to any stock lending arrangement or quasi-stock lending arrangement,—
- quasi-cash collateral is treated as if it were cash collateral, and
 - the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement is taken to be the amount of the cash collateral.

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- (6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.
- (7) In any case where—
 - (a) section 736C applies in relation to a quasi-stock lending arrangement, and
 - (b) the person for whom the tax advantage was designed to be obtained is a person (“the other person”) other than the borrower under that arrangement,
 that section has effect as if the other person were the person who receives the amount of interest mentioned in that section.
- (8) In any case where section 736C applies in relation to a quasi-stock lending arrangement—
 - (a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,
 - (b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and
 - (c) any reference in that section to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.
- (9) Section 839 (connected persons) applies for the purposes of this section.
- (10) In this section—
 - “money” includes money expressed in a currency other than sterling,
 - “property” means property in any form,
 - “stock lending arrangement” and “securities” have the same meaning as in section 263B of the 1992 Act,
 - “transfer” means a transfer otherwise than by way of sale.]

Textual Amendments

F19 S. 736D inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), Sch. 6 para. 4(3)

737 Manufactured dividends: treatment of tax deducted.

F20

Textual Amendments

F20 S. 737 repealed (with effect in accordance with Sch. 10 para. 16(1), Sch. 18 Pt. 6(10) Notes 3, 6 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 8, Sch. 18 Pt. 6(10) (with Sch. 10 para. 16(3)); S.I. 1997/991, art. 2

[^{F21}737A Sale and repurchase of securities: deemed manufactured payments.

F22

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Textual Amendments

- F21** Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122
- F22** Ss. 737A-737C repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, Sch. 27 Pt. 2(14), Note

737B Interpretation of section 737A.

F23

Textual Amendments

- F21** Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122
- F23** Ss. 737A-737C repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, Sch. 27 Pt. 2(14), Note

737C Deemed manufactured payments: further provisions.

F24]

Textual Amendments

- F21** Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 122
- F24** Ss. 737A-737C repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, Sch. 27 Pt. 2(14), Note

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