



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

Debts

253 Relief for loans to traders.

- (1) In this section “a qualifying loan” means a loan in the case of which—
- the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money, and
 - the borrower is resident in the United Kingdom, and
 - the borrower’s debt is not a debt on a security as defined in section 132;
- and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.
- (2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.
- (3) [^{F1}Where a person who has made a qualifying loan makes a claim and at that time]—
- any outstanding amount of the principal of the loan has become irrecoverable, and
 - the claimant has not assigned his right to recover that amount, and
 - the claimant and the borrower were not each other’s spouses [^{F2}or civil partners], or companies in the same group, when the loan was made or at any subsequent time,

Status: Point in time view as at 01/01/2007. This version of this provision has been superseded.

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[^{F3}then, to the extent that that amount is not an amount which, in the case of the claimant, falls to be brought into account as a debit given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships),] this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant [^{F4}at the time of the claim or (subject to subsection (3A) below) any earlier time specified in the claim].

[^{F5}(3A) For the purposes of subsection (3) above, an earlier time may be specified in the claim if:

- (a) the amount to which that subsection applies was also irrecoverable at the earlier time; and either
- (b) for capital gains tax purposes the earlier time falls not more than two years before the beginning of the year of assessment in which the claim is made; or
- (c) for corporation tax purposes the earlier time falls on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.]

(4) [^{F6}Where a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan makes a claim and at that time]—

- (a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower, and
- (b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount, and
- (c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment, and
- (d) the lender and the borrower were not each other's spouses [^{F7}or civil partners], or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses [^{F7}or civil partners], and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

this Act shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

[^{F8}(4A) A claim under subsection (4) above shall be made—

- (a) for the purposes of capital gains tax, on or before the fifth anniversary of the 31st January next following the year of assessment in which the payment was made;
- (b) for the purposes of corporation tax, within 6 years after the end of the accounting period in which the payment was made.]

(5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(6) Where—

- (a) an allowable loss has been treated under subsection (4) above as accruing to any person, and

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(b) the whole or any part of the amount of the payment mentioned in subsection (4)(b) is at any time recovered by him,

this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(7) Where—

(a) an allowable loss has been treated under subsection (3) above as accruing to a company (“the first company”), and

(b) the whole or any part of the outstanding amount mentioned in subsection (3) (a) is at any time recovered by a company (“the second company”) in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(8) Where—

(a) an allowable loss has been treated under subsection (4) above as accruing to a company (“the first company”), and

(b) the whole or any part of the outstanding amount mentioned in subsection (4) (a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), is at any time recovered by a company (“the second company”) in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(9) For the purposes of subsections (5) to (8) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money’s worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm’s length he shall be treated as receiving money or money’s worth equal to the market value of the right at the time of the assignment.

(10) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.

(11) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—

(a) no chargeable gain shall accrue to him otherwise than under subsection (5) above, and

(b) no allowable loss shall accrue to him under this Act,

on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.

(12) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.

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- (13) For the purposes of subsections (7) and (8) above, 2 companies are in the same group if they were in the same group when the loan was made or have been in the same group at any subsequent time.
- (14) In this section—
- (a) “spouses” means spouses who are living together (construed in accordance with section 288(3)),
 - [^{F9}(aa) “civil partners” means civil partners who are living together (construed in accordance with section 288(3)),]
 - (b) “trading company” has the meaning given by [^{F10}paragraph 22 of Schedule A1], and
 - (c) “group” shall be construed in accordance with section 170.
- (15) Subsection (3) above does not apply where the loan was made before 12th April 1978 and subsection (4) above does not apply where the guarantee was given before that date.

Textual Amendments

- F1** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(a\)](#)
- F2** Words in s. 253(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(2\)](#)
- F3** Words in s. 253(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 65](#) (with Sch. 15)
- F4** Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(2\)\(b\)](#)
- F5** S. 253(3A) inserted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(3\)](#)
- F6** Words in s. 253(4) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 8\(4\)](#)
- F7** Words in s. 253(4)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(3\)](#)
- F8** S. 253(4A) inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 40](#)
- F9** S. 253(14)(aa) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [120\(4\)](#)
- F10** Words in s. 253(14)(b) substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 140\(5\)\(b\)](#)

Modifications etc. (not altering text)

- C1** Ss. 253, 254 modified (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 9\(3\)\(4\)](#)
- C2** Ss. 253, 254 restricted (11.1.1994 retrospective) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 9\(5\)](#)
- C3** Ss. 253, 254 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 9\(2\)\(3\)](#) (with [Sch. 4 para. 9\(3\)\(5\)](#), 14); [S.I. 1994/2189](#), art. 2, Sch.
- C4** S. 253(4) modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 9\(2\)\(5\)](#)
- C5** S. 253(4) modified (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 6\(2\)](#)

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- C6** S. 253(7)(8) excluded (11.1.1994 retrospective) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 9(9)**
- C7** S. 253(9) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(5)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C8** S. 253(10) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(6)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.
- C9** S. 253(13) applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(7)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

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