



Finance Act 1996

1996 CHAPTER 8

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

LOAN RELATIONSHIPS

Supplemental

103 Interpretation of Chapter.

(1) In this Chapter—

^{F1}
...

[^{F2}“amortised cost basis of accounting”, in relation to a loan relationship of a company, means a basis of accounting under which an asset or liability representing the loan relationship is shown in the company’s accounts at cost adjusted for cumulative amortisation and any impairment, repayment or release;]

“creditor relationship”, in relation to a company, means any loan relationship of that company in the case of which it stands in the position of a creditor as respects the debt in question;

“debt” includes a debt the amount of which falls to be ascertained by reference to matters which vary from time to time;

“debtor relationship”, in relation to a company, means any loan relationship of that company in the case of which it stands in the position of a debtor as respects the debt in question;

[^{F3} “derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;]

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[^{F4}“exchange gain” and “exchange loss” shall be construed in accordance with subsections (1A) [^{F5}, (1AA)] and (1B) below;]

[^{F2}“fair value”, in relation to a loan relationship of a company, means the amount which, at the time as at which the value falls to be determined, is the amount that the company would obtain from or, as the case may be, would have to pay to an independent person for—

- (a) the transfer of all the company’s rights under the relationship in respect of amounts which at that time are not yet due and payable, and
- (b) the release of all the company’s liabilities under the relationship in respect of amounts which at that time are not yet due and payable;

“fair value accounting” means a basis of accounting under which assets or liabilities are shown in the company’s balance sheet at their fair value;]

“gilt-edged securities” means any securities which—

- (a) are gilt-edged securities for the purposes of the ^{M1}Taxation of Chargeable Gains Act 1992; or
- (b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they are issued;

[^{F2}“impairment” includes uncollectability;]

[^{F2}“impairment loss” means a debit in respect of the impairment of a financial asset;]

“an independent person” means a knowledgeable and willing party dealing at arm’s length;

“international organisation” means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members;

“loan” includes any advance of money, and cognate expressions shall be construed accordingly;

“money” shall be construed in accordance with section 81(6) above and subsection (5) below;

“money debt” shall be construed in accordance with section 81(2) above;

“non-trading credit” and “non-trading debit” shall be construed in accordance with section 82(3) above;

[^{F6}“related transaction” shall be construed in accordance with section 84 above (see subsections (5) and (6) of that section);]

“retail prices index” has the same meaning as it has, by virtue of section 833(2) of the Taxes Act 1988, in the Income Tax Acts;

“share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise [^{F7}but does not include a share in a building society].

^{F8}
...

[^{F9}(1A) References in this Chapter to exchange gains or exchange losses, in the case of any company, are references respectively to—

- (a) profits or gains, or
- (b) losses,

which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company.

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If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Chapter an exchange gain of nil shall be taken to arise in the case of that comparison.

[^{F10}(1AA) The Treasury may make provision by regulations as to the manner in which—

- (a) exchange gains or losses, and
- (b) any other profits or gains or losses,

are to be calculated for the purposes of subsection (1A) in a case where fair value accounting is used by the company.

Any such regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.]

(1B) Any reference in this Chapter to an exchange gain or loss from a loan relationship of a company is a reference to an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company.]

(2) For the purposes of this Chapter a company shall be taken to be a party to a creditor relationship for the purposes of a trade carried on by that company only if it is a party to that relationship in the course of activities forming an integral part of that trade.

(3) For the purposes of this Chapter, and of so much of any other enactment as contains provision by reference to which amounts fall to be brought into account for the purposes of this Chapter, activities carried on by a company in the course of—

- (a) any mutual trading, or
- (b) any mutual insurance or other mutual business which is not life assurance business (within the meaning of Chapter I of Part XII of the Taxes Act 1988),

shall be deemed not to constitute the whole or any part of a trade.

[^{F11}(3A) For the purposes of this Chapter, a commercial rate of interest, in the case of a company and any asset, is—

- (a) a rate (“the simple commercial rate”) that is reasonably comparable to the rate that the company could obtain by placing on deposit the money it invested in the asset, or
- (b) in any case where—
 - (i) the likely rate of increase in the value of the asset is in question, and
 - (ii) that likely rate is a lower rate than the simple commercial rate, and
 - (iii) the difference is a result of an expectation that the company would also obtain a tax advantage as a result of investing in the asset,

that lower rate.

(3B) In subsection (3A) above, “tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988.]

(4) If, in any proceedings, any question arises whether a person is an international organisation for the purposes of any provision of this Chapter, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

^{F12}(5)

[^{F13}(6) Where—

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- (a) a company ceases to be a party to a loan relationship in an accounting period (the “cessation period”),
- (b) profits, gains or losses arise to the company from the loan relationship or a related transaction in that accounting period, and
- (c) the credits or debits brought into account for the purposes of this Chapter for that accounting period do not include credits or debits which represent the whole of those profits, gains or losses,

credits or debits in respect of so much of those profits, gains or losses as are not represented by credits or debits brought into account for the cessation period shall continue to be brought into account under this Chapter over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a loan relationship to which the company is a party in those periods, and subsections (7) and (8) below shall apply.

(7) In any case falling within subsection (6) above, any question—

- (a) whether, in a post-cessation period, the company is to any extent a party to the loan relationship—
 - (i) for the purposes of a trade carried on by it, or
 - (ii) for any other particular purpose or purposes, or
- (b) whether, in a post-cessation period, the loan relationship is to any extent referable to a particular business, or a particular class, category or description of business, carried on by the company,

shall be determined by reference to the circumstances immediately before the company ceased to be a party to the loan relationship instead of the circumstances in the post-cessation period.

(8) In any case falling within subsection (6) above, any question—

- (a) whether the loan relationship has to any extent a particular purpose in a post-cessation period, or
- (b) whether there is a connection between the company and any other person for a post-cessation period,

shall be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.]

Textual Amendments

- F1** Words in s. 103(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 17\(2\)\(a\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F2** Words in s. 103(1) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 17\(2\)\(b\)](#)
- F3** In s. 103(1) definition of “derivative contract” inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 82(1), [Sch. 25 Pt. 1 para. 15](#)
- F4** In s. 103(1) definitions of “exchange gain” and “exchange loss” inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 79(2), [Sch. 23 Pt. 1 para. 7\(2\)](#) (with [Sch. 23 Pt. 3 para. 25](#))
- F5** Word in s. 103(1) inserted (retrospective to 7.4.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 6 para. 4\(4\)\(6\)](#)
- F6** In s. 103(1) definition of “related transaction” inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 79(2), [Sch. 23 Pt. 1 para. 7\(2\)](#) (with [Sch. 23 Pt. 3 para. 25](#))

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- F7** In s. 103(1) words in definition of "share" inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 82(1), [Sch. 25 Pt. 1 para. 14](#)
- F8** Words in s. 103(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 17\(2\)\(c\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F9** S. 103(1A)(1B) inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 79(2), [Sch. 23 Pt. 1 para. 7\(3\)](#) (with [Sch. 23 Pt. 3 para. 25](#))
- F10** S. 103(1AA) substituted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 6 para. 10](#)
- F11** S. 103(3A)(3B) inserted (with effect in accordance with [Sch. 7 para. 13\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 13\(1\)](#)
- F12** S. 103(5) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 17\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F13** S. 103(6)-(8) inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 82(1), [Sch. 25 Pt. 1 para. 16](#)

Modifications etc. (not altering text)

- C1** Pt. 4 Ch. 2 modified (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 14\(5\)-\(7\)](#)

Marginal Citations

- M1** 1992 c. 12.

104 Minor and consequential amendments.

Schedule 14 to this Act (which, for the purposes of both corporation tax and income tax, makes certain minor and consequential amendments in connection with the provisions of this Chapter) shall have effect.

105 Commencement and transitional provisions.

- (1) Subject to Schedule 15 to this Act, this Chapter has effect—
- for the purposes of corporation tax, in relation to accounting periods ending after 31st March 1996; and
 - so far as it makes provision for the purposes of income tax, in relation to the year 1996-97 and subsequent years of assessment.
- (2) Schedule 15 to this Act (which contains transitional provisions and savings in connection with the coming into force of this Chapter) shall have effect.

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