



Finance Act 1996

1996 CHAPTER 8

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

LOAN RELATIONSHIPS

[^{F1}Shares treated as loan relationships]

[^{F1}91D Condition 2 for section 91B(6)(b)]

- (1) Condition 2 is that the share—
- is redeemable (see subsection (2)),
 - is designed to produce a return which equates, in substance, to the return on an investment of money at a commercial rate of interest, and
 - is not an excepted share (see subsection (3)).

[^{F2}(2) For the purposes of this section, a share is to be regarded as redeemable if (and only if)—

- it is redeemable as a result of its terms of issue (or any collateral arrangements) requiring redemption, entitling the holder to require redemption or entitling the issuer to redeem, or
- there are arrangements which will or might entitle the investing company to qualifying redemption amounts.]

[For the purposes of subsection (2) above—

^{F3}(2A) “arrangements” includes any agreement or understanding (whether or not legally enforceable and whether or not forming part of the terms of issue of the share), and

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“qualifying redemption amounts” means amounts which, when taken together, are the same, or are substantially the same, as an amount that might be payable on the redemption of the share.]

- (3) A share is an “excepted share” for the purposes of this section if—
- (a) it is a qualifying publicly issued share (see subsections (4) and (5)),
 - (b) it is a share that mirrors a public issue (see subsections (6) to (8)), or
 - (c) the investing company's purpose in acquiring the share is not an unallowable purpose (see subsection (9)).
- (4) A share is a “qualifying publicly issued share” for the purposes of this section if—
- (a) it was issued by a company as part of an issue of shares to independent persons, and
 - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.
- (5) But a share is not a qualifying publicly issued share for those purposes if the investing company's purpose in acquiring the share is an unallowable purpose by virtue of subsection (9)(a) below.
- (6) The cases where a share mirrors a public issue are those set out in subsections (7) and (8) below.
- (7) Case 1 is where—
- (a) a company (company A) issues shares (the public issue) to independent persons,
 - (b) within [^{F4}7 days] of that issue, one or more other companies (companies BB) issue shares (the mirroring shares) to company A on the same, or substantially the same, terms as the public issue,
 - (c) company A and companies BB are associated companies (see subsection (11)), and
 - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue,
- and in any such case the mirroring shares are shares that mirror a public issue.
- (8) Case 2 is where, in the circumstances of Case 1,—
- (a) within [^{F5}7 days] of the public issue, one or more other companies (companies CC) issue shares (the second-level mirroring shares) to one or more of companies BB on the same, or substantially the same, terms as the public issue,
 - (b) company A, companies BB and companies CC are associated companies, and
 - (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue,
- and in any such case the second-level mirroring shares are also shares that mirror a public issue.
- (9) For the purposes of this section, a share is acquired by the investing company for an unallowable purpose if the purpose, or one of the main purposes, for which the company holds the share is—
- (a) the purpose of circumventing section 95 of the Taxes Act 1988 (see subsection (10)), or
 - (b) any other purpose which is a tax avoidance purpose (see subsection (11)).

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- (10) The purpose, or one of the main purposes, for which the investing company holds a share shall, in particular, be taken to be the purpose of circumventing section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) if the investing company was an associated company of a bank (see subsection (11)) at the time when the investing company acquired the share, unless the investing company shows that—
- (a) immediately before that time, some or all of its business consisted in making and holding investments, and
 - (b) it acquired the share in the ordinary course of that business.
- (11) In this section—
- “associated company”, in relation to any other company, means a company which, within the meaning given by section 413(3)(a) of the Taxes Act 1988, is a member of the same group of companies as that other company;
 - “bank” has the meaning given by section 840A of the Taxes Act 1988;
 - “independent person”, in relation to a company, means a person who is not connected with the company;
 - “tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988;
 - “tax avoidance purpose”, in the case of any company, means any purpose that consists in securing a tax advantage (whether for the company or any other person).
- (12) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this section.
- (13) This section is to be construed as one with section 91B above.]

Textual Amendments

- F1** Ss. 91C-91E inserted (with effect in accordance with Sch. 7 para. 10(7) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 10\(4\)](#)
- F2** S. 91D(2) substituted (with effect in accordance with Sch. 6 para. 15(6)-(9) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 15\(2\)](#)
- F3** S. 91D(2A) inserted (with effect in accordance with Sch. 6 para. 15(6)-(9) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 15\(3\)](#)
- F4** Words in s. 91D(7) substituted (with effect in accordance with Sch. 6 para. 15(10) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 15\(4\)](#)
- F5** Words in s. 91D(8) substituted (with effect in accordance with Sch. 6 para. 15(10) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 15\(5\)](#)

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