



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

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

### CHAPTER 8

#### ACCOUNTING PRACTICE AND RELATED MATTERS

#### **80 Accounting practice and related matters**

- (1) Schedule 4 (accounting practice and related matters) has effect.
- (2) In that Schedule—
  - Part 1 makes provision about bad debts and related matters;
  - Part 2 makes other provision connected with accounting practice.
- (3) Part 1 of the Schedule, so far as it amends provisions that have effect both for income tax and corporation tax, has effect for the purposes of corporation tax only.
- (4) Except as otherwise provided, the provisions of the Schedule have effect for periods of account beginning on or after 1st January 2005.

#### **81 Computation of profits: change of accounting basis**

- (1) In section 64 of FA 2002 (computation of profits: adjustment on change of basis), for subsection (3) (meaning of “relevant change of accounting approach”) substitute—
  - “(3) A “relevant change of accounting approach” means—
    - (a) a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment, or

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- (b) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts drawn up in accordance with international accounting standards.”.
- (2) In paragraphs 4(3) and 5(2) of Schedule 22 to FA 2002 (adjustments treated as arising on the last day of the first period of account for which the new basis is adopted), for “last day” substitute “ first day ”.
- (3) The amendments in this section have effect for periods of account beginning on or after 1st January 2005.

## **82 Change of accounting practice: deferment of transitional adjustments**

- (1) This section applies where—
  - (a) a company enters into a transaction on or after 14th December 2004, otherwise than in the ordinary course of its business,
  - (b) as a result of the transaction it incurs a loss in respect of a loan relationship or derivative contract in respect of which, apart from this section, a debit would fall to be brought into account for tax purposes in a period of account beginning before 1st January 2005,
  - (c) the sole or main purpose of the company in entering into the transaction at the time it did was to enable it to bring a debit into account for tax purposes in such a period, and
  - (d) if the company had continued to hold the asset or liability representing the loan relationship or derivative contract, as it was held immediately before the transaction referred to in paragraph (a), in its first period of account beginning on or after 1st January 2005, a debit would have arisen in respect of the loan relationship or derivative contract in that period that was a prescribed debit for the purposes of regulation 3 of the Loan Relationship and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271) (debits not to be brought into account until the company's first period beginning on or after 1st January 2006).
- (2) Where this section applies no such debit as is mentioned in subsection (1)(b) shall be brought into account in the period of account mentioned there, but a debit of the same amount shall instead be brought into account as if it were a prescribed debit for the purposes of the regulation referred to in subsection (1)(d) (even though the loss giving rise to the debit was incurred before 1st January 2005).
- (3) In determining the sole or main purpose of a company for the purposes of subsection (1)(c) regard shall be had to anything done by a connected company that would be relevant for the purposes of that determination if done by the company in question.  
 For this purpose companies are connected if they are connected persons within the meaning of section 839 of ICTA.
- (4) For the purposes of subsection (1)(d) it shall be assumed that the loan relationship or derivative contract has the same value at the beginning of the company's first period of account beginning on or after 1st January 2005 as it had at the time of the transaction referred to in subsection (1)(a).
- (5) This section does not apply where the transaction is entered into in pursuance of legally binding arrangements entered into before 14th December 2004.

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- (6) In this section, references to a company entering into a transaction include a reference to the company, or the directors of the company, taking a decision about a loan relationship or derivative contract that affects its treatment for accounting purposes (other than a decision to prepare some or all of the company's accounts in accordance with international accounting standards).

### **83 Application of accounting standards to securitisation companies**

- (1) For the purposes of the Corporation Tax Acts as they apply to a securitisation company in relation to a period of account—
- (a) beginning on or after 1st January 2005, and
  - (b) [<sup>F1</sup> (subject to subsection (7A)(a))] ending before [<sup>F2</sup> 1st January 2008],
- generally accepted accounting practice shall be taken to be UK generally accepted accounting practice as it applied for a period of account ending on 31st December 2004.
- (2) For the purposes of this section a “securitisation company” means a company that is—
- (a) a note-issuing company,
  - (b) an asset-holding company,
  - (c) an intermediate borrowing company,
  - (d) a warehouse company, or
  - (e) a commercial paper funded company,
- as defined below.
- (3) A “note-issuing company” means a company in relation to which the following conditions are met—
- (a) it is party as debtor to a capital market investment,
  - (b) the securities that represent the capital market investment are issued wholly or mainly to independent persons,
  - (c) the capital market investment is part of a capital market arrangement, <sup>F3</sup> . . .
  - (d) the total value of the capital market investments made under that capital market arrangement is at least £50 million [<sup>F4</sup>], and
  - (e) if it has any business apart from the activity mentioned in paragraph (a) (and any incidental activities) it consists in one or both of the following—
    - (i) acquiring, holding and managing assets forming the whole or part of the security for the capital market arrangement;
    - (ii) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.]
- (4) An “asset-holding company” means a company—
- (a) whose business (apart from any incidental activities) consists in acquiring, holding and managing assets forming the whole or part of the security for a capital market arrangement entered into by a note-issuing company, and
  - (b) whose liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or intermediate borrowing company.
- (5) An “intermediate borrowing company” means a company—

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- (a) whose only business is to enter into and be a party to creditor relationships with an asset-holding company [<sup>F5</sup>(or another intermediate borrowing company)], and
  - (b) whose liabilities representing debtor relationships are owed wholly, or substantially wholly, to a note-issuing company [<sup>F6</sup>(or another intermediate borrowing company)].
- (6) A “warehouse company” means a company whose business consists wholly of acquiring and holding financial assets for the purpose—
- (a) of transferring them to a company (whether or not yet in existence) that at the time of the transfer is, or as a result of the transfer will become, an asset-holding or note-issuing company, or
  - (b) of itself becoming an asset-holding or note-issuing company.
- (7) A “commercial paper funded company” means—
- (a) a company that was an asset-holding company but whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company—
    - (i) have been transferred to, or
    - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking, or
  - (b) a company that was an intermediate borrowing company but whose obligations under debtor relationships to a note-issuing company—
    - (i) have been transferred to, or
    - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking.

[<sup>F7</sup>(7A) The Treasury may by regulations—

- (a) make provision for subsection (1) to apply in relation to periods of account ending on or after 1st January 2008 but before a date specified by the regulations, and
- (b) make provision modifying any provision of, or made under, the Corporation Tax Acts in relation to the first period of account of securitisation companies in the case of which subsection (1) does not apply (whether by virtue of that subsection itself or regulations under paragraph (a)).]

[<sup>F7</sup>(7B) Regulations under subsection (7A)(a) may, in particular—

- (a) specify a date only in relation to specified descriptions of company,
- (b) specify different dates in relation to different descriptions of company, and
- (c) include provision for a company to elect that the regulations are to apply to it or provision for a company to elect that they are not to apply to it.]

(8) In this section—

“asset” includes any option, future or contract for differences as defined for the purposes of Schedule 26 to FA 2002 (derivative contracts) (see paragraph 12 of that Schedule);

“capital market investment” and “capital market arrangement” have the same meaning as in section 72B(1) of the Insolvency Act 1986 (c. 45) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act);

“company” includes a partnership;

“financial asset” has the meaning it has for accounting purposes; and

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“independent persons” means persons who are not connected with the company.

- (9) Section 839 of ICTA (connected persons) applies for the purposes of the definition above of “independent persons”, except that in applying the definition of “control” in that section a person is not to be treated as a participator in a company by reason only that he is a loan creditor of the company.

#### Textual Amendments

- F1** Words in s. 83(1)(b) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 59(2)**
- F2** Words in s. 83(1)(b) substituted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), **s. 101(2)(6)** (with s. 101(7)-(8))
- F3** Word in s. 83(3)(c) repealed (retrospectively) by [Finance Act 2006 \(c. 25\)](#), s. 101(3)(a)(6), **Sch. 26 Pt. 3(19)** (with s. 101(7)-(8))
- F4** S. 83(3)(e) and word inserted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), **s. 101(3)(b)(6)** (with s. 101(7)-(8))
- F5** Words in s. 83(5)(a) inserted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), **s. 101(4)(a)(6)** (with s. 101(7)-(8))
- F6** Words in s. 83(5)(b) inserted (retrospectively) by [Finance Act 2006 \(c. 25\)](#), **s. 101(4)(b)(6)** (with s. 101(7)-(8))
- F7** S. 83(7A)(7B) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **s. 59(3)**

#### Modifications etc. (not altering text)

- C1** S. 83 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Taxation of Securitisation Companies Regulations 2006 \(S.I. 2006/3296\)](#), regs. 1(1), **21**
- C2** S. 83(1) applied (27.12.2007) by [The Securitisation Companies \(Application of Section 83\(1\) of the Finance Act 2005: Accounting Standards\) Regulations 2007 \(S.I. 2007/3338\)](#), regs. 1, **2**

## 84 Taxation of securitisation companies

- (1) The Treasury may make provision by regulations as to the application of the Corporation Tax Acts in relation to a securitisation company.
- (2) For the purposes of this section a “securitisation company” means a company—
- in relation to which the following conditions are met—
    - it is party as debtor to a capital market investment,
    - securities representing that capital market investment are issued, and
    - the capital market investment is part of a capital market arrangement, and which meets such other conditions as may be specified; or
  - of a description specified by reference to its relationship, direct or indirect, with a company within paragraph (a).
- (3) The regulations may, in particular—
- provide for the application, modification or non-application of any of the provisions of the Corporation Tax Acts;
  - provide—
    - that the amount of profits of any specified description (before any such adjustments as are mentioned in paragraph (c)) is to be taken to be such amount, or is to be calculated on such basis, as may be specified, and

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- (ii) that that amount is to be brought into account for corporation tax purposes instead of any specified amount that would otherwise fall to be brought into account;
  - (c) provide for specified adjustments to be made to the amount to be brought into account for corporation tax purposes;
  - (d) provide—
    - (i) that the regulations apply to a company only if an election [<sup>F8</sup>that they are to apply is made or that the regulations do not apply to a company if an election that they are not to apply is made,]<sup>F9</sup>and]
    - <sup>F10</sup>(ii) . . . . .
    - (iii) that once subject to the regulations a company shall continue to be so for all subsequent periods of account;
  - (e) impose conditions that must be met if a company is to have, or continue to have, the benefit of the regulations; and
  - (f) provide for the consequences of failing to meet any specified condition (which may include recalculating, on the basis that the regulations did not apply, the company's profits for previous periods).
- (4) The regulations may make different provision for different descriptions of company.
- [<sup>F11</sup>(5) The regulations—
- (a) may make incidental, supplementary, consequential or transitional provision or savings (including provision amending any provision of, or made under, the Taxes Acts (within the meaning of section 118(1) of TMA 1970)), and
  - (b) may include provision having effect (in the case of provision relating to corporation tax) from the beginning of periods of account current when the regulations are made or (in the case of provision relating to income tax or capital gains tax) in relation to times before the regulations are made.]
- (6) In this section—
- “capital market investment” and “capital market arrangement” have the same meaning as in section 72B(1) of the Insolvency Act 1986 (c. 45) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act); and
  - “specified” means specified in regulations under this section.
- (7) The first regulations under this section shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.

#### Textual Amendments

- F8** Words in s. 84(3)(d) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 59\(5\)](#)
- F9** Word in s. 84(3)(d)(i) inserted (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(5\)\(a\)\(i\)\(6\)](#) (with s. 101(7)-(8))
- F10** S. 84(3)(d)(ii) and word repealed (retrospectively) by [Finance Act 2006 \(c. 25\), s. 101\(5\)\(a\)\(ii\)\(6\), Sch. 26 Pt. 3\(19\)](#) (with s. 101(7)-(8))
- F11** S. 84(5) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), s. 59\(6\)](#)

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