



Income Tax Act 2007

2007 CHAPTER 3

PART 13

TAX AVOIDANCE

CHAPTER 1

TRANSACTIONS IN SECURITIES

Procedure for counteraction of income tax advantages

695 Preliminary notification that section 684 may apply

- (1) An officer of Revenue and Customs must notify a person if the officer has reason to believe that—
 - (a) section 684 (person liable to counteraction of income tax advantage) may apply to the person in respect of a transaction or transactions, and
 - (b) a counteraction notice ought to be served on the person under section 698 about the transaction or transactions.
- (2) The notification must specify the transaction or transactions.
- (3) See section 698 for the serving of counteraction notices, and sections 696 and 697 for cases where the person on whom the notice under this section is served disagrees that section 684 applies.

696 Opposed notifications: statutory declarations

- (1) If a person on whom a notification is served under section 695 is of the opinion that section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions specified in the notification, the person may—

Status: Point in time view as at 06/04/2007.

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- (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
 - (b) send it to the officer of Revenue and Customs.
- (2) Such a declaration must be sent within 30 days of the issue of the notification.
- (3) If the person sends that declaration to the officer and the officer sees no reason to take further action—
- (a) section 684 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.

697 Opposed notifications: determinations by tribunal

- (1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 696(1) sees reason to take further action about the transaction or transactions in question.
- (2) The officer must send the tribunal appointed under section 704 a certificate to that effect, together with the statutory declaration.
- (3) The officer may also send the tribunal a counter-statement with the certificate.
- (4) The tribunal must—
- (a) consider the declaration and certificate and any counter-statement, and
 - (b) determine whether there is a prima facie case for the officer to take further action on the basis that section 684 (person liable to counteraction of income tax advantage) applies to the person by whom the declaration was made in respect of the transaction or transactions in question.
- (5) If the tribunal determines that there is no such case—
- (a) section 684 does not so apply, and
 - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.
- (6) But such a determination does not affect the application of sections 684 and 698 in respect of transactions including not only the ones to which the determination relates but also others.

698 Counteraction notices

- (1) If—
- (a) a person on whom a notification is served under section 695 does not send a statutory declaration to an officer of Revenue and Customs under section 696 within 30 days of the issue of the notification, or
 - (b) the tribunal to which such a declaration is sent under section 697 determines that there is a prima facie case for serving a notice on a person under this section,
- the income tax advantage in question is to be counteracted by adjustments.
- (2) The adjustments required to be made to counteract the income tax advantage and the basis on which they are to be made are to be specified in a notice served on the person by an officer of Revenue and Customs.

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- (3) In this Chapter such a notice is referred to as a “counteraction notice”.
- (4) Any of the following adjustments may be specified—
 - (a) an assessment,
 - (b) the nullifying of a right to repayment,
 - (c) the requiring of the return of a repayment already made, or
 - (d) the calculation or recalculation of profits or gains or liability to income tax.
- (5) Nothing in this section authorises the making of an assessment later than 6 years after the tax year to which the income tax advantage relates.
- (6) This section is subject to—
 - section 699 (limit on amount assessed in section 689 and 690 cases),
 - section 700 (timing of assessments in section 690 cases), and
 - section 702(2) (effect of clearance notification under section 701).
- (7) But no other provision in the Income Tax Acts is to be read as limiting the powers conferred by this section.

699 Limit on amount assessed in section 689 and 690 cases

- (1) This section applies if a counteraction notice is served in a case where the income tax advantage—
 - (a) consists of the avoidance of a charge to income tax, and
 - (b) is obtained by a person in circumstances falling within—
 - section 689 (receipt of consideration in connection with relevant company distribution (circumstance D)), or
 - section 690 (receipt of assets of relevant company (circumstance E)).
- (2) The amount of income tax which may be specified in an assessment made in accordance with the notice must not exceed the qualifying distribution equivalent.
- (3) The qualifying distribution equivalent is the amount of income tax for which the person would be liable if—
 - (a) the person received a qualifying distribution on the date on which the consideration mentioned in section 689 or, as the case may be, section 690 is received, and
 - (b) that distribution were of an amount equal to the amount or value of that consideration.

700 Timing of assessments in section 690 cases

- (1) This section applies if section 684 (person liable to counteraction of income tax advantage) applies to a person because the person is in a position to obtain or has obtained an income tax advantage by falling within the circumstances mentioned in section 690 (receipt of relevant company assets (circumstance E)) when share capital is repaid.
- (2) An assessment to income tax made in accordance with a counteraction notice must be an assessment for the tax year in which the repayment occurs.

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- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

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