



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 8

#### OTHER RELIEFS

#### CHAPTER 1

#### INTEREST PAYMENTS

#### *Loans for interests in close companies*

#### **392 Loan to buy interest in close company**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
  - (a) acquiring any part of the ordinary share capital of a close company that is not a close investment-holding company,
  - (b) lending to such a company money which is used wholly and exclusively—
    - (i) for the purposes of the business of the company, or
    - (ii) for the purposes of the business of any associated company of the company which is also a close company that is not a close investment-holding company, or
  - (c) repaying another loan to which this section applies.
- (3) Subsection (2)(a) does not apply if at any time the individual by whom the shares are acquired or that individual's spouse or civil partner—
  - (a) makes a claim for relief in respect of them under Part 5 of this Act or, in the case of shares issued before 6 April 2007, Chapter 3 of Part 7 of ICTA (enterprise investment scheme), or

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- (b) makes a claim in respect of them under Schedule 5B to TCGA 1992 (enterprise investment scheme: reinvestment).
- (4) In this section and section 393—
  - “close investment-holding company” has the meaning given by section 13A(1) of ICTA (companies not qualifying for small companies' relief), and
  - “associated company” has the meaning given by section 416 of ICTA.
- (5) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

### **393 Eligibility requirements for interest on loans within section 392**

- (1) Interest on a loan within section 392(1) to an individual is eligible for relief only if—
  - (a) when the interest is paid the company is not a close investment-holding company, and
  - (b) the capital recovery condition and either the full-time working conditions or the material interest conditions are met.
- (2) The capital recovery condition is that in the period from the use of the loan to the payment of the interest the individual has not recovered any capital from the company, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (3) The full-time working conditions are that—
  - (a) when the interest is paid the individual holds part of the ordinary share capital of the company, and
  - (b) in the period from the use of the loan to the payment of the interest the greater part of the individual's time has been spent in the actual management or conduct of the company or of an associated company of the company.
- (4) The material interest conditions are that—
  - (a) when the interest is paid the individual has a material interest in the company (see section 394), and
  - (b) if the company exists wholly or mainly for the purpose of holding investments or other property, either—
    - (i) the condition in subsection (3)(b) is met, or
    - (ii) no property held by the company is used as a residence by the individual.

### **394 Meaning of “material interest” in section 393**

- (1) For the purposes of section 393(4)(a) an individual has a material interest in a company if a relevant person meets condition A or B.
- (2) In this section “relevant person” means—
  - (a) the individual, either alone or with one or more associates (see section 395), or
  - (b) any associate of the individual with or without such other associates.
- (3) Condition A is that the relevant person is the beneficial owner of, or able directly or indirectly to control, more than 5% of the ordinary share capital of the company.

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- (4) Condition B is that the relevant person possesses, or is entitled to acquire, such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (5) In this section—
- “control” has the meaning given by section 416(2) to (6) of ICTA, and
  - “participator” has the meaning given by section 417(1) of ICTA.

### **395 Meaning of “associate” in section 394**

- (1) For the purposes of determining under section 394 whether an individual has a material interest in a company, in that section “associate”, in relation to that individual and company, means—
- (a) a relative or partner of the individual,
  - (b) the trustees of a settlement in relation to which—
    - (i) the individual is a settlor, or
    - (ii) a relative of the individual (living or dead) is or was a settlor,
  - (c) if the individual is interested in any shares or obligations of the company which are subject to a trust, the trustees of the settlement, and
  - (d) if the individual is interested in any shares or obligations of the company which are part of the estate of a deceased person, the personal representatives.
- (2) But, despite subsection (1)(c), the trustees of an employee benefit trust are not regarded for the purposes of section 394 as the associates of an individual merely because the individual has an interest in shares or obligations of the company as a beneficiary of the trust, unless subsection (3) applies.
- (3) This subsection applies if at any time after 26 July 1989 the individual, alone or with associates, or an associate of the individual, alone or with other such associates—
- (a) has been the beneficial owner of more than 5% of the ordinary share capital of the company, or
  - (b) has been able directly or indirectly to control more than 5% of that share capital.
- (4) In subsection (3) “associate” has the meaning given by section 549(4) of ITEPA 2003.
- (5) Sections 552 to 554 of ITEPA 2003 (attribution of interests in company) apply for the purposes of subsection (3) in relation to the individual as they apply for the purposes of the provisions listed in section 549(2) of that Act in relation to an employee.
- (6) In this section—
- “control” has the meaning given by section 416(2) to (6) of ICTA,
  - “employee benefit trust” has the meaning given by section 550 of ITEPA 2003 except that the reference in section 550(3) of that Act to 13 March 1989 is to be read as a reference to 26 July 1989, and
  - “relative” means spouse or civil partner, ancestor or lineal descendant or brother or sister.

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