

SCHEDULES

SCHEDULE 13

Section 32

CHARGEABLE GAINS IN STOCK LENDING: INSOLVENCY ETC OF BORROWER

- 1 TCGA 1992 is amended as follows.
- 2 (1) Section 263B (stock lending arrangements) is amended as follows.
- (2) In subsection (2), for “section 263C(2)” substitute “sections 263C(2) and 263CA(3) and (5)”.
- (3) In subsection (4)—
- (a) in paragraph (a), insert at the end “for a consideration equal to their market value at that time”,
 - (b) in paragraph (b), after “at that time” insert “for that consideration”, and
 - (c) insert at the end (not as part of paragraph (c))—
“This subsection does not apply where section 263CA (insolvency of borrower) applies.”
- (4) In subsection (7), omit the definition of “interest”.
- 3 After section 263C (stock lending involving redemption) insert—

“263CA Stock lending: insolvency etc of borrower

- (1) This section applies where, in the case of any stock lending arrangement—
- (a) the borrower (B) becomes insolvent after the lender (L) has transferred the securities,
 - (b) as a result of the insolvency, the requirement for B to make a transfer back to L will not be complied with as regards some or all of the securities,
 - (c) collateral is used (whether directly or indirectly) to enable L to acquire securities (“replacement securities”) of the same description as the securities which will not be transferred back, and
 - (d) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which B becomes insolvent (“the insolvency date”).
- (2) In accordance with section 263B(2), the transfer of the securities under the arrangement is not to be regarded as a disposal by L for the purposes of this Act (but this is subject to subsection (5)).
- (3) B is to be treated for the purposes of this Act as having acquired the securities which will not be transferred back to L; and that acquisition is to be treated—
- (a) as being made on the insolvency date, and
 - (b) as being for a consideration equal to their market value on that date.

Status: This is the original version (as it was originally enacted).

- (4) The acquisition of the replacement securities is to be treated, as regards L, as if it were a transfer back of securities in accordance with the arrangement (so that, in accordance with section 263B(2), that acquisition is not regarded as an acquisition by L for the purposes of this Act).
- (5) If the number of replacement securities is less than the number of securities which B is treated as having acquired, L is to be treated for the purposes of this Act as having made a disposal, at the insolvency date, of the difference (“the deemed disposal”).
- (6) The consideration for the deemed disposal is—
- (a) where all the collateral is used to enable L to acquire replacement securities, nil, and
 - (b) where not all the collateral is so used, the difference between—
 - (i) the market value (at the insolvency date) of the number of securities which could have been acquired using the collateral, and
 - (ii) the market value (at that date) of the number of securities which were in fact so acquired.
- (7) But if L at any time receives any amount (whether arising out of B’s insolvency or otherwise) in respect of B’s liability to L in respect of the securities which are treated under subsection (5) as having been disposed of by L that amount is to be treated as a chargeable gain accruing at that time to L.
- (8) The liability mentioned in subsection (7) is not to be treated as giving rise to a relevant non-lending relationship for the purposes of Part 6 of CTA 2009 (relationships treated as loan relationships etc).
- (9) For the purposes of this section, B becomes insolvent—
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
 - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
 - (c) on the commencement of a creditor’s voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
 - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
 - (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
 - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
 - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
 - (h) if a bank administration order takes effect under Part 3 of that Act, or
 - (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

- (10) In this section—
- (a) “collateral” means an amount of money or other property which—
 - (i) is provided under the arrangement (or under arrangements of which the arrangement forms part), and
 - (ii) is payable to or made available for the benefit of L for the purpose of securing the discharge of the requirement to transfer any or all of the securities back to L, and
 - (b) any expression used in this section and in section 263B has the same meaning as in that section.”
- 4 (1) The amendments made by paragraphs 2(2) and (3)(c) and 3 apply—
- (a) in any case where B becomes insolvent on or after 24 November 2008, and
 - (b) where L makes an election under this paragraph, in any case where B becomes insolvent in the period beginning on 1 September 2008 and ending on 23 November 2008.
- (2) An election under sub-paragraph (1)(b) must relate to all stock lending arrangements in which L is the lender and B is the borrower and must be made—
- (a) where L is a company (within the meaning given by section 288(1) of TCGA 1992), no later than the second anniversary of the end of the accounting period of L in which 23 November 2008 falls, and
 - (b) otherwise, no later than 31 January 2011.
- (3) Where section 263CA (inserted by paragraph 3) applies to any case which occurs before a period for which CTA 2009 has effect, the reference in subsection (8) of that section to a relevant non-lending relationship for the purposes of Part 6 of that Act is to be read as a reference to a relationship to which section 100 of FA 1996 applies.