



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 5

#### LOAN RELATIONSHIPS

### CHAPTER 15

#### TAX AVOIDANCE

*Transactions not at arm's length: exchange gains and losses*

**447 Exchange gains and losses on debtor relationships: loans disregarded under Schedule 28AA to ICTA**

- (1) Subsections (2) and (3) apply if—
  - (a) a company has a debtor relationship in an accounting period,
  - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
  - (c) as a result of paragraph 1 of Schedule 28AA to ICTA (provision not at arm's length) the profits and losses of the company are calculated for tax purposes for the period as if—
    - (i) the loan had not been made, or
    - (ii) part of the loan had not been made.
- (2) In a case where subsection (1)(c)(i) applies, the exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.
- (3) In a case where subsection (1)(c)(ii) applies, a proportion of the exchange gain or loss must be left out of account in determining those credits or debits.
- (4) That proportion is the proportion that the part of the loan that is treated as if it had not been made bears to the whole of the loan.

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- (5) Nothing in Schedule 28AA to ICTA requires the amounts brought into account under this Part in respect of exchange gains or losses from loan relationships to be calculated on the assumption that the arm's length provision had been made instead of the actual provision.
- (6) But subsection (5) does not affect the application of subsections (2) and (3) under subsection (1).
- (7) In this section “the arm's length provision” and “the actual provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

**448 Exchange gains and losses on debtor relationships: equity notes where holder associated with issuer**

- (1) This section applies if—
  - (a) a company has a debtor relationship in an accounting period,
  - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
  - (c) the whole of any interest or other distribution out of the assets of the company in respect of securities of the company which represent the relationship is regarded as a distribution because of section 209(2)(e)(vii) of ICTA (equity notes held by company associated with issuer or by a funded company).
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.

**449 Exchange gains and losses on creditor relationships: no corresponding debtor relationship**

- (1) This section applies if—
  - (a) a company has a creditor relationship in an accounting period, and
  - (b) an exchange gain or loss arises in the period in respect of an asset representing the relationship.
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part if conditions A and B are met.
- (3) Condition A is that the transaction giving rise to the loan is such that it would not have been entered into at all if the parties had been dealing at arm's length.
- (4) Condition B is that there is no corresponding debtor relationship.
- (5) For the meaning of “corresponding debtor relationship”, see section 450.
- (6) This section is subject to section 451 (exception to this section where loan exceeds arm's length amount).

**450 Meaning of “corresponding debtor relationship”**

- (1) In section 449 “corresponding debtor relationship” means a debtor relationship which—
  - (a) corresponds to the creditor relationship mentioned in section 449(1), and

- (b) is of such a kind that conditions A and B are met.
- (2) Condition A is that such credits as are mentioned in subsection (3) would fall to be brought into account for the purposes of this Part in respect of exchange gains from that debtor relationship.
- (3) Those credits are credits corresponding to, and of the same amount as, the debits that would fall to be so brought into account in respect of exchange losses from the creditor relationship apart from section 449.
- (4) Condition B is that such debits as are mentioned in subsection (5) would fall to be so brought into account in respect of exchange losses from that debtor relationship.
- (5) Those debits are debits corresponding to, and of the same amount as, the credits that would fall to be so brought into account in respect of exchange gains from the creditor relationship apart from section 449.
- (6) In determining for the purposes of this section whether credits or debits would fall to be so brought into account, section 328(2) to (7) (as a result of which some exchange gains and losses are excluded from this Part) is ignored.

#### **451 Exception to section 449 where loan exceeds arm's length amount**

- (1) Section 449 does not apply if the circumstances are such that, had the parties to the relevant transaction been dealing at arm's length, the amount of the loan would have been an amount ("the arm's length amount") greater than nil, but less than its actual amount.
- (2) Accordingly, an exchange gain or loss which arises in the accounting period in respect of an asset representing the creditor relationship is not required by that section to be left out of account.
- (3) But if—
- (a) the circumstances are as mentioned in subsection (1), and
  - (b) there is no corresponding debtor relationship,
- only a proportion of the exchange gain or loss may be taken into account in determining the credits or debits to be brought into account for the purposes of this Part.
- (4) That proportion is the proportion which the arm's length amount bears to the actual amount of the loan.
- (5) In this section—
- "corresponding debtor relationship" has the same meaning as in section 449 (see section 450), and
  - "the relevant transaction" means the transaction giving rise to the loan as a result of which the company has the creditor relationship in the accounting period in question.

#### **452 Exchange gains and losses where loan not on arm's length terms**

- (1) This subsection applies if—

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- (a) a company would be treated as having a debtor relationship in an accounting period if a claim were made under paragraph 6D(2) of Schedule 28AA to ICTA in relation to that period, and
  - (b) for that period there is a connection between that company and the company that would have the corresponding creditor relationship.
- (2) If subsection (1) applies, it is assumed that such a claim is made for the purpose of determining the debits or credits to be brought into account for the purposes of this Part in respect of any exchange gains or losses arising in that period in respect of the liability representing that debtor relationship.
- (3) Subsections (4) and (5) apply if—
  - (a) because of a claim made under paragraph 6D(2) of Schedule 28AA to ICTA more than one company is treated for any purpose as having a debtor relationship represented by the same liability, or
  - (b) because of the claim that is assumed to be made under subsection (2) more than one company is so treated.
- (4) The total amount of the credits brought into account for the purposes of this Part in respect of exchange gains from those debtor relationships must not exceed the total amount of the debits brought into account for those purposes in respect of exchange losses from the corresponding creditor relationship.
- (5) The total amount of the debits brought into account for those purposes in respect of exchange losses from those debtor relationships must not exceed the total amount of the credits brought into account for those purposes in respect of exchange gains from the corresponding creditor relationship.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.