



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 5

#### LOAN RELATIONSHIPS

#### CHAPTER 6

##### CONNECTED COMPANIES RELATIONSHIPS: IMPAIRMENT LOSSES AND RELEASES OF DEBTS

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

- C1** Pt. 5 Chs. 6-8 modified (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), ss. 601, 1184\(1\)](#) (with [Sch. 2](#))
- C2** Pt. 5 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), ss. 990\(5\), 1184\(1\)](#) (with [Sch. 2](#))

##### *Introduction*

### **353 Introduction to Chapter**

- (1) This Chapter contains rules about impairment losses and releases of debts in the case of companies connected with other companies.
- (2) In particular, see—
  - (a) sections 354 to 357 (which prevent debits in respect of impairment losses and release debits from being brought into account in the case of connected companies relationships, subject to some exceptions),
  - (b) sections 358 to 360 (which exclude credits in respect of the release of debts or the reversal of impairments from being brought into account in that case, except where the release is a deemed release under section 361 or 362), and

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- (c) sections 361 to 363 (which treat debt releases as occurring when impaired debts become held by companies which might otherwise benefit from the exclusion under section 358).

<sup>F1</sup>(3) .....

- (4) Section 466 (companies connected for an accounting period) applies for the purposes of sections 354 to 360.
- (5) For the circumstances in which companies are connected for sections 361 and 362, see section 363.
- (6) For the meaning of “impairment loss [<sup>F2</sup>and release debit]” see section 476(1).

#### Textual Amendments

- F1** S. 353(3) omitted (22.4.2009 retrospective) by virtue of [Finance Act 2009 \(c. 10\), s. 42\(2\)\(a\)\(12\)](#)
- F2** Words in s. 353(6) inserted (22.4.2009 retrospective) by [Finance Act 2009 \(c. 10\), s. 42\(2\)\(b\)\(12\)](#)

#### *Exclusion of debts for impaired or released connected companies debts*

### **354 Exclusion of debts for impaired or released connected companies debts**

- (1) The general rule is that no impairment loss or release debit in respect of a company's creditor relationship is to be brought into account for the purposes of this Part for an accounting period if section 349 (application of amortised cost basis to connected companies relationship) applies to the relationship for the period.
- (2) That rule is subject to—
- (a) section 356 (swapping debt for equity), and
  - (b) section 357 (insolvent creditors).
- (3) Nothing in this section affects the debts to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

### **355 Cessation of connection**

- (1) This section applies if, in the case of a creditor relationship of a company—
- (a) an impairment loss or release debit is excluded by section 354 from being brought into account for any accounting period, and
  - (b) there is a later accounting period for which the creditor relationship in respect of the debt is not a connected companies relationship.
- (2) So far as any amount represents the impairment loss or release debit, no debit may be brought into account in respect of it—
- (a) for the first accounting period within subsection (1)(b), or
  - (b) for any subsequent such accounting period.

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### **356 Exception to section 354: swapping debt for equity**

- (1) An impairment loss or release debit in relation to a liability to pay any amount to a company (“the creditor company”) under its creditor relationship is not prevented from being brought into account by section 354 if conditions A, B and C are met.
- (2) Condition A is that the creditor company treats the liability as discharged.
- (3) Condition B is that it does so in consideration of—
  - (a) any shares forming part of the ordinary share capital of the company on which the liability would otherwise have fallen, or
  - (b) any entitlement to such shares.
- (4) Condition C is that there would be no connection between the two companies for the accounting period in which the consideration is given if the question whether there is such a connection were determined by reference only to times before the creditor company—
  - (a) acquired possession of the shares, or
  - (b) acquired any entitlement to them.

### **357 Exception to section 354: insolvent creditors**

- (1) An impairment loss or release debit is not prevented from being brought into account by section 354 in relation to an amount accruing to a company (“the creditor”) if—
  - (a) condition A, B, C, D or E is met in relation to the creditor, and
  - (b) the amount accrues to the creditor at a time which is the relevant time for the condition in question.
- (2) Condition A is that the creditor is in insolvent liquidation, and for this condition the relevant time is any time in the course of the winding up.
- (3) Condition B is that the creditor is in insolvent administration, and for this condition the relevant time is any time in the course of the administration.
- (4) Condition C is that the creditor is in insolvent administrative receivership, and for this condition the relevant time is any time when the appointment of the administrative receiver is in force.
- (5) Condition D is that an appointment of a provisional liquidator is in force in relation to the creditor under section 135 of the Insolvency Act 1986 (c. 45) or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and for this condition the relevant time is any time when the appointment is in force.
- (6) Condition E is that under the law of a country or territory outside the United Kingdom, circumstances exist corresponding to those described in condition A, B, C or D, and for this condition the relevant time is any time corresponding to that described in the case of the condition in question.
- (7) Section 323 applies for interpreting this section as it applies for interpreting section 322(6).

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*Exclusion of credits for connected companies debts on release or reversal of impairments*

**358 Exclusion of credits on release of connected companies debts: general**

- (1) This section applies if—
  - (a) a liability to pay an amount under a company's debtor relationship is released,
  - (b) the release takes place in an accounting period for which—
    - (i) an amortised cost basis of accounting is used in respect of the relationship, and
    - (ii) the relationship is a connected companies relationship.
- (2) The company is only required to bring a credit into account in respect of the release for the purposes of this Part if it is a deemed release.
- (3) In subsection (2) “deemed release” means a release which is deemed to occur because of—
  - (a) section 361 (acquisition of creditor rights by connected company at undervalue), or
  - (b) section 362 (parties becoming connected where creditor's rights subject to impairment adjustment).

**359 Exclusion of credits on release of connected companies debts during creditor's insolvency**

- (1) This section applies if—
  - (a) a liability to pay an amount under a company's debtor relationship is released,
  - (b) the release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of that relationship,
  - (c) condition A, B, C, D or E in section 357 is met in relation to the company releasing the amount,
  - (d) immediately before the time when the condition in question was first met the relationship was a connected companies relationship, and
  - (e) immediately after that time it was not such a relationship.
- (2) The company is not required to bring into account a credit in respect of the release for the purposes of this Part.

**360 Exclusion of credits on reversal of impairments of connected companies debts**

- (1) If an impairment loss is prevented from being brought into account by section 354, no credit in respect of any reversal of the impairment may be brought into account for the purposes of this Part.
- (2) Nothing in this section affects the credits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

*Deemed debt releases on impaired debts becoming held by connected company*

**361 Acquisition of creditor rights by connected company at undervalue**

- (1) This section applies if—

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- (a) a company (“D”) is a party to a loan relationship as debtor,
  - (b) another company (“C”) becomes a party to it as creditor,
  - (c) immediately after it does so C and D are connected,
  - (d) in a case where the person from whom C acquires its rights under the loan relationship is a company, in the period of account in which C acquires them there is no connection between C and that company,
  - (e) the amount or value of any consideration given by C for the acquisition is less than the pre-acquisition carrying value (see subsection (5)), and
  - (f) at least one of the conditions in subsection (2) is met.
- (2) The conditions are that—
- (a) the acquisition is not an arm's length transaction, and
  - (b) there was a connection between C and D at any time in the period of 3 years beginning 4 years before the date of the acquisition.
- (3) C is treated as releasing its rights under the loan relationship when it acquires them.
- (4) The amount treated as released is the amount of the difference referred to in subsection (1)(e).
- (5) In subsection (1)(e) “the pre-acquisition carrying value” means the amount which would be the carrying value of the liability under the loan relationship in D's accounts if a period of account had ended immediately before C became a party to it.
- (6) For the purposes of subsection (5) the carrying value is determined taking no account of—
- (a) accrued amounts, or
  - (b) amounts paid or received in advance.

### **362 Parties becoming connected where creditor's rights subject to impairment adjustment**

- (1) This section applies if—
- (a) a company (“D”) is a party to a loan relationship as debtor,
  - (b) another company (“C”) which—
    - (i) is a party to the loan relationship as creditor, and
    - (ii) is not connected with D,
 becomes connected with D, and
  - (c) the pre-connection carrying value would have been adjusted for impairment if a period of account had ended immediately before the companies became connected.
- (2) C is treated as releasing its rights under the loan relationship when C and D become connected.
- (3) The amount treated as released is the amount of the impairment adjustment referred to in subsection (1)(c).
- (4) In subsection (1)(c) “the pre-connection carrying value” means the amount that would be the carrying value of the asset representing the loan relationship in C's accounts if a period of account had ended immediately before the companies became connected.

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- (5) For the purposes of subsection (4) the carrying value is determined taking no account of—
- (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses.

### **363 Companies connected for sections 361 and 362**

- (1) For the purposes of sections 361 and 362 there is a connection between two companies at any time if condition A or B is met at that time.
- (2) Condition A is that one company has control of the other.
- (3) Condition B is that both companies are under the control of the same person (but see subsection (6)).
- (4) For the purposes of sections 361 and 362 there is a connection between two companies in a period of account if there is a connection between them (within subsection (1)) at any time in the period.
- (5) Section 472 (meaning of “control”) applies for the purposes of this section.
- (6) Condition B is not taken to be met just because two companies have been under the control of—
  - (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department,
  - (e) a foreign sovereign power, or
  - (f) an international organisation.
- (7) Section 468 (connection between companies to be ignored in some circumstances) applies for the purposes of this section as it applies for the purposes of the provisions which apply section 466, taking references in sections 468 and 469 to the accounting period as references to the period of account.
- (8) For the meaning of “international organisation”, see section 476(2) and (3).

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