



Corporation Tax Act 2009

2009 CHAPTER 4

PART 6

RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

[^{F1}CHAPTER 2A

DISGUISED INTEREST

Textual Amendments

- F1** Pt. 6 Ch. 2A inserted (with effect in accordance with Sch. 24 paras. 11, 13-16 of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 24 para. 3](#)

486A Overview

- (1) This Chapter provides for Part 5 to apply in relation to returns which are economically equivalent to interest (see section 486B).
- (2) For exclusions from this Chapter, see—
 - (a) section 486C (return otherwise taxable),
 - (b) section 486D (arrangement having no tax avoidance purpose), and
 - (c) section 486E (excluded shares).

486B Disguised interest to be regarded as profit from loan relationship

- (1) Where a company is party to an arrangement which produces for the company a return in relation to any amount which is economically equivalent to interest, Part 5 applies as if the return were a profit arising to the company from a loan relationship.
- (2) For the purposes of this Chapter a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—

Status: Point in time view as at 21/07/2009.

Changes to legislation: Corporation Tax Act 2009, Chapter 2A is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
 - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
 - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (3) In subsection (2)(c) “ the relevant time ” means the time when the company becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the company.
- (4) The credits and debits to be brought into account for the purposes of Part 5 in respect of the return must be determined on an amortised cost basis of accounting.
- (5) But if any of the return is not recognised in determining the company's profit or loss for any period it is to be treated as recognised using an amortised cost basis of accounting.
- (6) Where two or more persons are party to an arrangement which produces a return such as is mentioned in subsection (1)—
- (a) for the persons (when taken together), but
 - (b) not for either (or any) of them individually,
- this section applies as if there were a profit arising to such (if any) of them as are companies from a loan relationship of so much of the return as is just and reasonable.
- (7) The only amounts which may be brought into account for corporation tax purposes in relation to a return such as is mentioned in subsection (1) in the case of any company are those which are brought into account in accordance with this section (but see section 486C).
- (8) In subsection (4) “credits” and “debits” include exchange gains and losses arising as a result of translating at different times the carrying value of the return or the amount by reference to which the return falls to be produced.
- (9) In this Chapter “ arrangement ” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), other than one which constitutes a finance lease (within the meaning given by section 219 of CAA 2001).

486C Exclusion where return otherwise taxable

- (1) This Chapter does not apply to an arrangement which produces a return for a company if or to the extent that the return—
- (a) is charged to corporation tax as income of the company or brought into account as income of the company for corporation tax purposes no later than the time when amounts are brought into account in relation to the return in accordance with section 486B,
 - (b) arises from anything that would produce credits or debits in relation to the company under Part 7 (derivative contracts) or Part 8 (intangible fixed assets) but for any exception relating to particular credits or debits, or

Status: Point in time view as at 21/07/2009.

Changes to legislation: Corporation Tax Act 2009, Chapter 2A is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) arises from anything that would produce credits or debits in relation to the company under Part 5 apart from this Chapter but for any exception relating to particular credits or debits.
- (2) Subsection (1)(b) does not disapply this Chapter in the case of a return in relation to which section 641 (derivative contracts taxed on chargeable gains basis) applies.

486D Exclusion where arrangement has no tax avoidance purpose

- (1) This Chapter does not apply in relation to a return produced by an arrangement to which a company is a party unless it is reasonable to assume that the main purpose, or one of the main purposes, of the company being a party to the arrangement is to obtain a relevant tax advantage.
- (2) But a company for which a return is produced by an arrangement to which this Chapter would otherwise be prevented from applying by subsection (1) may elect that this Chapter is to apply in relation to the return.
- (3) An election under subsection (2)—
 - (a) may not be made by a company if section 486B applies to the company in relation to the return in accordance with subsection (6) of that section,
 - (b) must be made no later than the time when the arrangement begins to produce a return for the company, and
 - (c) is irrevocable.
- (4) In this section “ obtain a relevant tax advantage ” means secure that the return (or any part of it) is produced in a way which means that its treatment for corporation tax purposes is more advantageous to the company than it would be if it were—
 - (a) charged to corporation tax as income of the company, or
 - (b) brought into account as income of the company for corporation tax purposes, at the time when amounts would be brought into account in relation to the return in accordance with section 486B.
- (5) Nothing in this section applies in relation to a company for an accounting period if the company is an excluded controlled foreign company.
- (6) For this purpose a company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
 - (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
 - (b) are not so apportioned because of section 748(1) of that Act.

486E Excluded shares

- (1) This Chapter does not apply in relation to an accounting period (“ the relevant accounting period ”) of a company (“the holding company”) for which an arrangement produces a return for the company if the arrangement involves only relevant shares held by the company throughout the relevant period.
- (2) In this section “ the relevant period ” means the period—
 - (a) beginning with the later of—
 - (i) the time when the holding company becomes party to the arrangement, and

Status: Point in time view as at 21/07/2009.

Changes to legislation: Corporation Tax Act 2009, Chapter 2A is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (ii) the time when the arrangement begins to produce a return for the company, and
- (b) ending with the earliest of—
 - (i) the end of the relevant accounting period,
 - (ii) the time when the holding company ceases to be party to the arrangement, and
 - (iii) the time when the arrangement ceases to produce a return for the company.
- (3) For the purposes of this section an arrangement “involves only” relevant shares if (and only if) the return produced reflects only an increase in the fair value of the shares.
- (4) For the purposes of subsection (3)—
 - (a) “ fair value ”, in relation to relevant shares held by the holding company, means an amount which the company would obtain from a knowledgeable and willing purchaser of the shares dealing at arm's length, and
 - (b) there is an increase in the fair value of shares even if the increase is realised by the payment of a distribution in respect of the shares.
- (5) In this section “ relevant shares ” means shares which, throughout the relevant period, are—
 - (a) fully paid-up shares of a relevant company, or
 - (b) shares of a company, other than a relevant company, which would be accounted for as a liability by the company in which they are shares in accordance with generally accepted accounting practice and which produce for the holding company a return in relation to any amount which is economically equivalent to interest (as to which see Chapter 6A).
- (6) For the purposes of subsection (5)(a) shares are fully paid-up if there are no actual or contingent obligations—
 - (a) to meet unpaid calls on the shares, or
 - (b) to make a contribution to the capital of the company in which they are shares that could affect the value of the shares.
- (7) For the purposes of subsection (5) a company is “a relevant company” if—
 - (a) it and the holding company are connected companies,
 - (b) it is a relevant joint venture company, or
 - (c) it is a relevant controlled foreign company.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (7)(a).
- (9) For the purposes of subsection (7)(b) a company is a relevant joint venture company if—
 - (a) the holding company is one of two persons who, taken together, control it,
 - (b) the holding company is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and
 - (c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.
- (10) Section 755D of ICTA (meaning of “control” etc) applies for the purposes of subsection (9)(a) as for those of Chapter 4 of Part 17 of that Act (controlled

Status: Point in time view as at 21/07/2009.

Changes to legislation: Corporation Tax Act 2009, Chapter 2A is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

foreign companies), except that no rights and powers are attributed to a person by subsection (6)(c) or (d) of that section.

- (11) For the purposes of subsection (7)(c) a company is a relevant controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned to the holding company for the relevant accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
 - (b) are not so apportioned because of section 748(1) or (3) of that Act.
- (12) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this section.]

Status:

Point in time view as at 21/07/2009.

Changes to legislation:

Corporation Tax Act 2009, Chapter 2A is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.