



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 6

#### RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

#### [<sup>F1</sup>CHAPTER 6A

#### SHARES ACCOUNTED FOR AS LIABILITIES

##### Textual Amendments

- F1** Pt. 6 Ch. 6A inserted (retrospective and with effect in accordance with Sch. 24 paras. 12, 13-16 of the commencing Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 24 para. 412](#)

#### 521A Introduction to Chapter

- (1) This Chapter contains rules for Part 5 (and the other provisions of the Corporation Tax Acts) to apply in some cases as if at some times in the accounting period of a company (“A”) which holds shares of a certain kind in another company (“B”) the shares were rights under a creditor relationship of A.
- (2) See, in particular—
  - (a) section 521B (application of Part 5 to some shares as rights under creditor relationship), and
  - (b) section 521C (which describes the shares to which the rules apply).
- (3) In this Chapter references to the investing company are to A and references to the issuing company are to B.
- (4) For the purposes of this Chapter, the definition of “share” in section 476(1) only applies so far as it provides that “share” does not include a share in a building society.

*Status: Point in time view as at 18/11/2015.*

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- (5) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this Chapter.
- (6) See section 116B of TCGA 1992 for the effect for chargeable gains purposes of shares beginning or ceasing to be shares to which section 521C applies.

### **521B Application of Part 5 to certain shares as rights under creditor relationship**

- (1) This section applies in relation to the times in a company's accounting period when—
  - (a) the company holds a share in another company, and
  - (b) section 521C (shares accounted for as liabilities) applies to the share.
- (2) Part 5 (and the other provisions of the Corporation Tax Acts) apply as if at those times—
  - (a) the share were rights under a creditor relationship of the investing company, and
  - (b) any distribution in respect of the share were not a distribution (and accordingly is within Part 5).
- (3) Where Part 5 applies in relation to the investing company in accordance with subsection (2) it so applies as if the issuing company stood in the position of debtor as respects the debt in question.
- (4) No debits are to be brought into account by the investing company as respects the share but this does not affect debits to be brought into account in respect of exchange gains or losses.
- (5) Subsection (2)(b) does not affect the operation of Part 1 of Schedule 25 of ICTA (controlled foreign companies: acceptable distribution policy) (including as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009).
- (6) In this Chapter references to “the share” are to the share mentioned in subsection (1).

### **521C Shares accounted for as liabilities**

- (1) This section applies to the share if—
  - (a) the share would be accounted for by the issuing company as a liability in accordance with generally accepted accounting practice,
  - (b) the share produces for the investing company a return in relation to any amount which is economically equivalent to interest,
  - (c) the issuing company and the investing company are not connected companies,
  - (d) the condition in subsection (4) is met,
  - (e) the share is not an excepted share (see section 521D), and
  - (f) the investing company holds the share for an unallowable purpose (see section 521E).
- (2) For the purposes of this section a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
  - (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

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- (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 investing company first holds the share or, if later, when the share begins to produce a return for the investing company.
- (4) The condition mentioned in subsection (1)(d) is that the share does not fall to be treated for the accounting period in question as if it were rights under a creditor relationship of the investing company because of section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights).
- (5) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

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

**C1** S. 521C applied by 2010 c. 8, s. 371SQ(2) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 1](#))

**521D Excepted shares**

- (1) A share is an excepted share for the purposes of section 521C if it is—
  - (a) a qualifying publicly-issued share (see subsection (2)), or
  - (b) a share which mirrors a public issue (see subsections (3) and (4)).
- (2) A share is a “qualifying publicly-issued share” if—
  - (a) it was issued by a company as part of an issue of shares to persons not connected with the company, and
  - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.
- (3) The first case where shares (“the mirroring shares”) mirror a public issue is where—
  - (a) a company (“company A”) issues shares (“the public issue”) to persons not connected with the company,
  - (b) within 7 days of that issue, one or more other companies (“companies BB”) issue the mirroring shares to company A on the same terms as the public issue or substantially the same terms,
  - (c) company A and companies BB are associated companies (see subsection (5)), and
  - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue.
- (4) The second case where shares (“the second level mirroring shares”) mirror a public issue is where, in the circumstances of the first case—
  - (a) within 7 days of the public issue, one or more other companies (“companies CC”) issue the second level mirroring shares to one or more of companies BB on the same terms as the public issue or substantially the same terms,
  - (b) company A, companies BB and companies CC are associated companies (see subsection (5)), and

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- (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue.
- (5) For the purposes of subsections (3) and (4) companies are associated companies if they are members of the same group of companies for the purposes of <sup>F2</sup>Part 5 of CTA 2010 (group relief) (see section 152 of that Act)].

**Textual Amendments**  
**F2** Words in s. 521D(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 634** (with Sch. 2)

**521E Unallowable purpose**

- (1) For the purposes of section 521C, the investing company holds the share for an unallowable purpose if the main purpose, or one of the main purposes for which the company holds the share is to obtain a relevant tax advantage.
- (2) But the investing company may elect that this Chapter is to apply in relation to the share even though it would otherwise be prevented from applying by subsection (1) (f) of that section.
- (3) An election under subsection (2)—
  - (a) must be made no later than the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company, and
  - (b) is irrevocable.
- (4) In this section “ obtain a relevant tax advantage ” means secure that the return produced by the share (or any part of it) is received in a way that means that its treatment for corporation tax purpose is more advantageous to the investing company than it would be if it were—
  - (a) charged to corporation tax as income of the investing company, or
  - (b) brought into account as income of the investing company for corporation tax purposes,
 at the time when amounts would be brought into account in relation to the return in accordance with section 521B.

<sup>F3</sup>(5) .....

<sup>F3</sup>(6) .....

**Textual Amendments**  
**F3** S. 521E(5)(6) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 20 para. 28** (with Sch. 20 para. 50(9))

**521F Shares becoming or ceasing to be shares to which section 521B applies**

- (1) This section applies if at any time section 521B begins or ceases to apply in the case of a share held by the investing company.

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- (2) The investing company is treated for the purposes of Part 5—
- (a) as having disposed of the share immediately before that time for consideration of an amount equal to the notional carrying value of the share at that time, and
  - (b) as having immediately reacquired it for consideration of the same amount.
- (3) In subsection (2) “notional carrying value”, in relation to the share, means the amount which would have been [<sup>F4</sup>its tax-adjusted carrying value based on] the accounts of the investing company if a period of account had ended immediately before section 521B began or ceased to apply in the case of the share and the investing company.

<sup>F5</sup>(4) . . . . . ]

**Textual Amendments**

- F4** Words in s. 521F(3) substituted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 57\(a\)](#)
- F5** S. 521F(4) omitted (with effect in accordance with Sch. 7 Pt. 6 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 7 para. 57\(b\)](#)

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

- C2** S. 521F excluded (with effect in accordance with Sch. 24 paras. 13-16 of the commencing Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 24 para. 15\(4\)](#)

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