



Corporation Tax Act 2009

2009 CHAPTER 4

PART 7

DERIVATIVE CONTRACTS

CHAPTER 5

CONTINUITY OF TREATMENT ON TRANSFERS WITHIN GROUPS

Introductory

624 Introduction to Chapter

- (1) This Chapter makes provision—
 - (a) about continuity of treatment in some cases in which a company replaces a member of the same group of companies as a party to a derivative contract, and
 - (b) about cases in which the company ceases to be a member of the group.
- (2) For the meaning of references in this Chapter to a company replacing another as a party to a derivative contract, see section 627.
- (3) In this Chapter, references to a company being a member of a group of companies are to be read in accordance with section 170 of TCGA 1992 (interpretation of sections 171 to 181 of that Act: groups).
- (4) For modifications of this Chapter for insurance companies, see section 636.

Group member replacing another as party to derivative contract

625 Group member replacing another as party to derivative contract

- (1) This section applies if—

Status: Point in time view as at 01/04/2010.

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- (a) there is a transaction within section 626(2) or a series of transactions within section 626(3),
 - (b) as a result one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a derivative contract.
- (2) The credits and debits to be brought into account in accordance with this Part in respect of the derivative contract are determined in accordance with subsections (3) to (5).
- (3) For the accounting period in which the transaction or, as the case may be, the first of the transactions takes place, the transferor is treated as having entered into that transaction for consideration of an amount equal to the notional carrying value of the contract (see subsection (6)).
- (4) For any accounting period in which the transferee is a party to the contract, it is treated as if it had acquired the contract for consideration of an amount equal to its notional carrying value.
- (5) If a discount arises in respect of the transaction or series of transactions, the consideration is increased for the purposes of subsection (3) (but not subsection (4)) by the amount of the discount.
- (6) For the purposes of this section—
- (a) “discount” has same meaning as in section 480 (relevant non-lending relationships involving discounts), and
 - (b) the notional carrying value of a contract is the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the contract.
- (7) ^{[F1}Part 4 of TIOPA 2010] (provision not at arm's length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this section.
- (8) This section is subject to sections 628 (transferor using fair value accounting) and 629 (tax avoidance).

Textual Amendments

- F1** Words in s. 625(7) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 141](#) (with [Sch. 9 paras. 1-9, 22](#))

626 Transactions to which section 625 applies

- (1) This section applies for the purposes of section 625(1)(a).
- (2) A transaction is within this subsection if it is a related transaction between two companies which are—
- (a) members of the same group, and
 - (b) within the charge to corporation tax in respect of that transaction.
- (3) A series of transactions is within this subsection if it is a series of transactions having the same effect as a related transaction between two companies each of which—

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- (a) has been a member of the same group at any time in the course of that series of transactions, and
- (b) would be within the charge to corporation tax in respect of such a related transaction.

627 Meaning of company replacing another as party to derivative contract

- (1) References in this Chapter to one company (“A”) replacing another company (“B”) as a party to a derivative contract include references to A becoming a party to a derivative contract which—
 - (a) confers rights within subsection (2),
 - (b) imposes liabilities within subsection (2), or
 - (c) both confers such rights and imposes such liabilities.
- (2) Rights or liabilities are within this subsection if they are equivalent to those of B under a derivative contract to which B has previously ceased to be a party.

Exceptions to section 625

628 Transferor using fair value accounting

- (1) This section applies instead of section 625 if, in a case where that section would otherwise apply, the transferor uses fair value accounting as respects the derivative contract.
- (2) The amount which is to be brought into account by the transferor in respect of—
 - (a) the transaction mentioned in that section, or
 - (b) the series of transactions mentioned in that section taken together,is the fair value of the derivative contract as at the date of transfer to the transferee.
- (3) For any accounting period in which the transferee is a party to the contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract in accordance with this Part, the transferee is treated as if it had acquired the contract for consideration of an amount equal to the fair value of the contract as at the date of transfer to it.
- (4) If a discount arises in respect of the transaction or series of transactions, the amount to be brought into account under subsection (2) is increased by the amount of the discount.
- (5) In this section—
 - “discount” has the same meaning as in section 480 (relevant non-lending relationships involving discounts), and
 - “the transferor” and “the transferee” have the same meaning as in section 625.

629 Tax avoidance

- (1) Section 625 does not apply if conditions A and B are met.

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- (2) Condition A is that the transferor is a party to arrangements in accordance with which there is likely to be a transfer of rights or liabilities under the derivative contract by the transferee to another person in circumstances in which section 625 would not apply.
- (3) Condition B is that the purpose or one of the main purposes of the arrangements is to secure a tax advantage for the transferor or a person connected with it.
- (4) Section 625 does not apply in relation to a disposal if section 698 (disposals for consideration not fully recognised by accounting practice) applies in relation to the disposal.
- (5) In this section—
 - “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions,
 - “tax advantage” has the meaning given by [F2section 1139 of CTA 2010],
 - “transfer” includes any arrangement which equates in substance to a transfer (including any acquisition or disposal of, or increase or decrease in, a share of the profits or assets of a firm), and
 - “the transferor” and “the transferee” have the same meaning as in section 625.

Textual Amendments

- F2** Words in s. 629(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. 639** (with Sch. 2)

Transferee leaving group after replacing transferor as party to derivative contract

630 Introduction to sections 631 and 632

- (1) Sections 631 and 632 apply if—
 - (a) section 625 (group member replacing another as party to derivative contract) applies because of a transaction or series of transactions within section 626(2) or (3), and
 - (b) before the end of the relevant 6 year period and while still a party to the relevant derivative contract, the transferee ceases to be a member of the relevant group.
- (2) But the transferee is not to be treated for the purposes of this section and sections 631 and 632 as having left the relevant group if—
 - (a) rights and liabilities under a derivative contract are transferred in the course of a transfer or merger in relation to which Chapter 9 (European cross-border transfers of business) or Chapter 10 (European cross-border mergers) applies, and
 - (b) the transferee ceases to be a member of the relevant group in consequence of the transfer or merger.
- (3) In a case where subsection (2) applies, if the transferee becomes a member of another group in consequence of the transfer or merger, it is to be treated for the purposes of this section and sections 631 and 632 as if the relevant group and the other group were the same.

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- (4) In this section and sections 631 and 632—
- “the relevant 6 year period” means the period of 6 years following—
 - (a) in a case where section 625 applies because of a transaction within section 626(2) (“case A”), that transaction, or
 - (b) in a case where section 625 applies because of a series of transactions within section 626(3) (“case B”), the last transaction of that series,
 - “the relevant derivative contract” means the derivative contract mentioned in section 625(1),
 - “the relevant group” means—
 - (a) in case A, the group mentioned in section 626(2),
 - (b) in case B, the group mentioned in section 626(3), and
 - “the transferee” has the same meaning as in section 625.

631 Transferee leaving group otherwise than because of exempt distribution

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group, and
 - (b) it does not so cease just because of a distribution which is exempt [^{F3}as a result of section 1075 of CTA 2010 (exempt distributions)].
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before so ceasing,
 - (b) the assignment had been for consideration of an amount equal to their fair value at that time, and
 - (c) the transferee had immediately reacquired them for consideration of the same amount.
- (3) Condition A is that if subsection (2) applied a credit would be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and
 - (b) because of section 345(2)(a) and (b) (transferee leaving group otherwise than because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 5 (loan relationships) in respect of the creditor relationship.

Textual Amendments

- F3** Words in s. 631(1) 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. 640** (with Sch. 2)

Modifications etc. (not altering text)

- C1** S. 631 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by **Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971)**, regs. 1(1), **25(3)(c)** (with reg. 25(6))
- C2** S. 631 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by **Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971)**, regs. 1(1), **25(5)(b)** (with reg. 25(6))

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632 Transferee leaving group because of exempt distribution

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt [^{F4}as a result of section 1075 of CTA 2010 (exempt distributions),] and
 - (b) there is a chargeable payment within the meaning of [^{F5}section 1088(1) of CTA 2010] (chargeable payments connected with exempt distributions) within 5 years after the making of the distribution.
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned its rights and liabilities under the relevant derivative contract immediately before that chargeable payment was made,
 - (b) the assignment had been for consideration of an amount equal to their fair value immediately before the transferee ceased to be a member of the relevant group, and
 - (c) the transferee had immediately reacquired them for consideration of the same amount.
- (3) Condition A is that if subsection (2) applied a credit would be brought into account in accordance with this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the transferee has a hedging relationship between the relevant derivative contract and a creditor relationship, and
 - (b) because of section 346(2)(a) and (b) (transferee leaving group because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 5 (loan relationships) in respect of the creditor relationship.

Textual Amendments

- F4** Words in s. 632(1)(a) 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. 641(a)** (with Sch. 2)
- F5** Words in s. 632(1)(b) 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. 641(b)** (with Sch. 2)

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