



Corporation Tax Act 2010

2010 CHAPTER 4

PART 16

FACTORING OF INCOME ETC

CHAPTER 2

FINANCE ARRANGEMENTS

Type 1 arrangements

758 Type 1 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.
- (2) Condition A is that under the arrangement—
 - (a) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
 - (b) the borrower or a person connected with the borrower makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
 - (c) the lender or a person connected with the lender is entitled to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
 - (a) the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.

Status: Point in time view as at 24/07/2010.

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- (5) For the purposes of this section the borrower and the lender are not connected with one another.

759 Certain tax consequences not to have effect

- (1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).
- (2) The arrangement is not to have that effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to corporation tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
 - (c) the borrower or a person connected with the borrower becomes entitled to an income deduction.
- (4) But if the borrower is a partnership the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to corporation tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a member of the partnership is not so brought into account, or
 - (c) a member of the partnership becomes entitled to an income deduction.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.
- (6) An income deduction is—
- (a) a deduction in calculating income for corporation tax purposes, or
 - (b) a deduction from total profits.

760 Payments treated as borrower's income

- (1) This section applies if—
- (a) a type 1 finance arrangement would not have the relevant effect (ignoring section 759(2)),
 - (b) that arrangement would not have the corresponding income-tax effect (ignoring section 809BZB(2) of ITA 2007), and
 - (c) the borrower is—
 - (i) a company within the charge to corporation tax, or
 - (ii) a partnership at least one member of which is a company within the charge to corporation tax.
- (2) The payments mentioned in section 758(2)(c) must be treated for corporation tax purposes as income of the borrower payable in respect of the security.
- (3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.

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- (4) Subsections (3) to (6) of section 759 (meaning of relevant effect) apply for the purposes of this section as for those of that.
- (5) In subsection (1)(b) “the corresponding income-tax effect” means the relevant effect as defined by section 809BZB(3) to (6) of ITA 2007 (provision for income tax corresponding to section 759(3) to (6)).

761 Deemed loan relationship if borrower is a company

- (1) This section applies if—
 - (a) there is a type 1 finance arrangement,
 - (b) the borrower is a company, and
 - (c) either—
 - (i) the arrangement is prevented by section 759 from having the relevant effect in relation to the company, or
 - (ii) section 760 applies to the company.
- (2) For the purposes of Part 5 of CTA 2009 (loan relationships)—
 - (a) the advance is treated in relation to the company as a money debt owed by it, and
 - (b) the arrangement is treated in relation to the company as a loan relationship of the company (as a debtor relationship).
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts as a finance charge in respect of the advance is treated as interest payable under the loan relationship.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
 - (a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

762 Deemed loan relationship if borrower is partnership with corporate member

- (1) This section applies if—
 - (a) there is a type 1 finance arrangement,
 - (b) the borrower is a partnership, and
 - (c) either—
 - (i) the arrangement is prevented by section 759 from having the relevant effect in relation to a company that is a member of the partnership, or
 - (ii) section 760 applies to the partnership (in which event “the company” in subsections (2) and (3) means the company within the charge to corporation tax that is a member of the partnership).
- (2) For the purposes of Part 5 of CTA 2009 (loan relationships)—

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- (a) the advance is treated in relation to the company as a money debt owed by the partnership, and
 - (b) the arrangement is treated in relation to the company as a loan relationship of the partnership (as a debtor relationship).
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the company's accounts, or the partnership's accounts, as a finance charge in respect of the advance is treated as interest payable under the loan relationship by the partnership.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 758(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

Type 2 arrangements

763 Type 2 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
- (a) under the arrangement a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
 - (b) the transferor is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
 - (c) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (d) there is a relevant change in relation to the partnership (see section 764), and
 - (e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
- (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

764 Relevant change in relation to partnership

- (1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.

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- (2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition B is that—
 - (a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and
 - (b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.
- (4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—
 - (a) if it is condition A that is met, to the person who becomes a member of the partnership, and
 - (b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

765 Certain tax consequences not to have effect

- (1) This section applies if—
 - (a) there is a type 2 finance arrangement, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) In such a case—
 - (a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to the transferor as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly the finance arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
 - (a) an amount of income on which the transferor would otherwise have been charged to corporation tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of the transferor is not so brought into account, or
 - (c) the transferor becomes entitled to an income deduction.
- (4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 763(2)(e) were payable to the partnership before the relevant change in relation to it occurred.
- (5) An income deduction is—
 - (a) a deduction in calculating income for corporation tax purposes, or
 - (b) a deduction from total profits.

766 Deemed loan relationship

- (1) This section applies if—

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- (a) there is a type 2 finance arrangement, and
 - (b) the transferor is a company within the charge to corporation tax.
- (2) In relation to the company—
- (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
 - (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the company under the transaction.
- (4) The reference in subsection (3) to the partnership's accounts includes a reference to the transferor's accounts.
- (5) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 763(2)(e) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

Type 3 arrangements

767 Type 3 finance arrangement defined

- (1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
- (a) a partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
 - (b) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
 - (c) there is a relevant change in relation to the partnership (see section 764), and
 - (d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
- (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
 - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

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768 Certain tax consequences not to have effect

- (1) This section applies if—
 - (a) there is a type 3 finance arrangement, and
 - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) The relevant effect is that—
 - (a) an amount of income on which a relevant member would otherwise have been charged to corporation tax is not so charged,
 - (b) an amount which would otherwise have been brought into account in calculating for corporation tax purposes any income of a relevant member is not so brought into account, or
 - (c) a relevant member becomes entitled to an income deduction.
- (3) A relevant member is a person who—
 - (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.
- (4) If this section applies—
 - (a) sections 1259 to 1265 of CTA 2009 (partnerships involving companies) are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
 - (b) accordingly the finance arrangement is not to have the relevant effect.
- (5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 767(2)(d) were payable to the partnership before the relevant change in relation to it occurred.
- (6) An income deduction is—
 - (a) a deduction in calculating income for corporation tax purposes, or
 - (b) a deduction from total profits.

769 Deemed loan relationship

- (1) This section applies if—
 - (a) there is a type 3 finance arrangement, and
 - (b) a relevant member is a company within the charge to corporation tax.
- (2) In relation to the company—
 - (a) the advance is treated for the purposes of Chapter 9 of Part 5 of CTA 2009 (and the other provisions of that Part (loan relationships)) as a money debt owed by the partnership, and
 - (b) the arrangement is treated as a transaction for the lending of money from which the debt is treated as arising for those purposes.
- (3) Any amount which in accordance with generally accepted accounting practice is recorded in the partnership's accounts as a finance charge in respect of the advance is treated as interest payable by the partnership under the transaction.
- (4) The reference in subsection (3) to the partnership's accounts includes a reference to the accounts of any relevant member.

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- (5) If an amount is treated as interest (“deemed interest”) under subsection (3), to find out when it is paid—
- (a) treat the payments mentioned in section 767(2)(d) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
 - (b) treat the interest elements of the payments as paid when the payments are paid, and
 - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.
- (6) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
 - (b) is not the lender.

Exceptions

770 Exceptions: preliminary

- (1) Sections 771 to 773 make provision for finance arrangement codes not to apply in certain circumstances.
- (2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—
 - (a) sections 758 to 762 (type 1 arrangements),
 - (b) sections 763 to 766 (type 2 arrangements), and
 - (c) sections 767 to 769 (type 3 arrangements).

771 Exceptions

- (1) A finance arrangement code does not apply if the whole of the advance under the arrangement—
 - (a) is charged to tax on a relevant person as an amount of income,
 - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
 - (c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.
- (2) Treat subsection (1)(c) as not met if—
 - (a) the receipt gives rise, or proceeds give rise, to a balancing charge, and
 - (b) the amount of the balancing charge is limited by any provision of CAA 2001.
- (3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—
 - (a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or
 - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

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- (4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).
- (5) A finance arrangement code does not apply so far as—
 - (a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or
 - (b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).
- (6) A finance arrangement code does not apply so far as Chapter 6 of Part 6 of CTA 2009, Part 10A of ITA 2007 or Chapter 4 of Part 4 of TCGA 1992 has effect in relation to the arrangement (alternative finance arrangements).
- (7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.
- (8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.
- (9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.
- (10) Section 772 defines a relevant person for the purposes of this section.

772 Exceptions: relevant person

- (1) This section defines a relevant person for the purposes of section 771.
- (2) If (apart from sections 771 and 773) sections 758 to 762 would apply, each of the following is a relevant person—
 - (a) the borrower, and
 - (b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.
- (3) If (apart from sections 771 and 773) sections 763 to 766 would apply, the transferor is a relevant person.
- (4) If (apart from sections 771 and 773) sections 767 to 769 would apply, a relevant member as there defined is a relevant person.
- (5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 1122 (meaning of “connected”) are connected with the borrower.

773 Power to make further exceptions

- (1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.
- (2) The regulations may amend sections 771 and 772.
- (3) The power to make regulations includes—
 - (a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),

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- (b) power to make different provision for different cases or different purposes, and
- (c) power to make incidental, supplemental, consequential and transitional provision and savings.

Supplementary

774 Accounts

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.
- (3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.
- (4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

775 Arrangements

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

776 Assets

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a person receiving an asset includes—
 - (a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and
 - (b) a reference to the discharge (in whole or part) of a liability of the person.
- (3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.
- (4) A reference to payments in respect of an asset includes—
 - (a) a reference to payments in respect of another asset substituted for it under the arrangement, and
 - (b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it.

Status:

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