



Finance Act 2012

2012 CHAPTER 14

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 3

CORPORATION TAX: GENERAL

Anti-avoidance

23 Loan relationships: debts becoming held by connected company

- (1) Chapter 6 of Part 5 of CTA 2009 (loan relationships: connected companies and impairment losses and releases of debt) is amended as follows.
- (2) In section 362 (parties becoming connected where creditor's rights subject to impairment adjustment)—
 - (a) in subsection (1)—
 - (i) omit paragraph (c) (impairment in pre-connection carrying value of creditor's loan relationship), and
 - (ii) omit the “and” before that paragraph and, at the end of paragraph (a), insert “ and ”,
 - (b) for subsections (3) and (4) substitute—
 - “(3) The amount treated as released is the amount (if any) by which the pre-connection carrying value in D's accounts exceeds the pre-connection carrying value in C's accounts.
 - (4) In subsection (3)—

“the pre-connection carrying value in D's accounts” means the amount that would be the carrying value of the liability representing the loan relationship in D's accounts if a period

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of account had ended immediately before C and D became connected, and

“the pre-connection carrying value in C's accounts” means—

- (a) in any case where C was a party to the loan relationship as creditor on the last day of the period of account ending immediately before the one in which C and D became connected, the cost of the asset representing the loan relationship which would be given on that day on an amortised cost basis of accounting, and
- (b) in any other case, the amount or value of any consideration given by C for the acquisition of the asset representing the loan relationship.”, and”
- (c) in subsection (5)—
 - (i) in the opening words, for “the carrying value is determined taking no account of—” substitute “no account is to be taken of—”,
 - (ii) at the end of paragraph (a) insert “or”, and
 - (iii) omit paragraph (c) (together with the “or” before that paragraph), and
- (d) in the heading, at the end insert “**etc**”.

(3) After section 363 insert—

“363A Arrangements for avoiding section 361 or 362

- (1) This section applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party in entering into them (or any part of them) is—
 - (a) to avoid an amount being treated as released under section 361 or 362, or
 - (b) to reduce the amount which is treated as released under section 361 or 362.
- (2) The arrangements (or part of the arrangements) are not to achieve that effect (so that an amount, or a greater amount, falls to be treated as released under section 361 or 362).
- (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”
- (4) The amendments made by subsection (2) have effect as follows—
 - (a) the amendments made by paragraphs (a), (b) and (d) have effect in relation to any case where the companies become connected on or after 27 February 2012, but if the companies become connected on or after that date but before 1 April 2012 section 362 of CTA 2009 has effect as if the following were substituted for subsections (3) and (4) of that section—
 - “(3) The amount treated as released is whichever is the greater of the following amounts—
 - (a) the amount (if any) that the pre-connection carrying value in C's accounts would have been adjusted for impairment if a period of account had ended immediately before the companies became connected, and

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- (b) the amount (if any) by which the pre-connection carrying value in D's accounts exceeds the pre-connection carrying value in C's accounts.
- (4) In subsection (3) “the pre-connection carrying value”, in relation to C's accounts or D's accounts, means the amount that would be the carrying value of the asset or liability representing the loan relationship in the accounts if a period of account had ended immediately before the companies became connected.”, and”
- (b) the amendments made by paragraph (c) have effect in relation to any case where the companies become connected on or after 1 April 2012, and section 363 of CTA 2009 applies for the purposes of this subsection as it applies for the purposes of sections 361 to 362 of that Act.
- (5) The amendment made by subsection (3) has effect in relation to—
- (a) arrangements entered into on or after 27 February 2012, or
 - (b) arrangements entered into before that date where the amount is treated as released, or would have been treated as released, on or after that date.
- (6) But subsection (5)(b) does not apply if the amount is treated as released, or would have been treated as released, pursuant to an unconditional obligation in a contract made before 27 February 2012.
- (7) An “unconditional” obligation is one which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).
- (8) The conditions in section 361(1)(a) to (c) of CTA 2009 are treated as met (and the remaining provisions of that section have effect accordingly) in any case where—
- (a) arrangements are entered into by any party at any time,
 - (b) directly or indirectly in consequence of, or otherwise in connection with, those arrangements a company (“C”) becomes a party to a loan relationship as creditor,
 - (c) the time at which C becomes a party to the loan relationship falls on or after 1 December 2011 but before 27 February 2012,
 - (d) directly or indirectly in consequence of, or otherwise in connection with, those arrangements C subsequently becomes connected with another company (“D”) which is a party to the loan relationship as debtor, and
 - (e) that subsequent time falls before 27 February 2012.
- (9) For the purposes of subsection (8)—
- (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
 - (b) the reference to C becoming connected with D is to be read in accordance with section 363 of CTA 2009.
- (10) Subsections (8) and (9) are to have effect as if they were contained in Part 5 of CTA 2009 (and the cases in which section 361 of CTA 2009 has effect in accordance with subsection (8) include any case where C or D is a member of a firm which becomes or is a party to the loan relationship and in that case references to C or D (other than references to the connection which C or D has with a company) are references to the firm).

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- (11) For the purpose of applying section 361 of CTA 2009 in accordance with subsection (8) no account is to be taken of anything done on or after 27 February 2012.
- (12) If section 361 of CTA 2009 has effect in accordance with subsection (8), section 362 of that Act does not apply.

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