



Finance (No. 2) Act 2015

2015 CHAPTER 33

PART 4

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Income tax and capital gains tax

45 Carried interest and disguised investment management fees: “arise”

(1) In ITA 2007, after section 809EZD insert—

“809EZDA Sums arising to connected persons other than companies

- (1) This section applies in relation to an individual (“A”) if—
 - (a) a sum arises to a person (“B”) who is connected with A,
 - (b) B is not a company,
 - (c) income tax is not charged on B in respect of the sum by virtue of this Chapter,
 - (d) capital gains tax is not charged on B in respect of the sum by virtue of Chapter 5 of Part 3 of TCGA 1992, and
 - (e) the sum does not arise to A apart from this section.
- (2) The sum referred to in subsection (1)(a) arises to A for the purposes of this Chapter.
- (3) Where a sum arises to A by virtue of this section, it arises to A at the time the sum referred to in subsection (1)(a) arises to B.
- (4) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
 - (a) subsection (4) of that section were omitted, and

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- (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).

809EZDB Sums arising to connected company or unconnected person

- (1) This section applies in relation to an individual (“A”) if—
 - (a) a sum arises to—
 - (i) a company connected with A, or
 - (ii) a person not connected with A,
 - (b) any of the enjoyment conditions is met, and
 - (c) the sum does not arise to A apart from this section.
- (2) The enjoyment conditions are—
 - (a) the sum, or part of the sum, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A or a person connected with A;
 - (b) the arising of the sum operates to increase the value to A or a person connected with A of any assets which—
 - (i) A or the connected person holds, or
 - (ii) are held for the benefit of A or the connected person;
 - (c) A or a person connected with A receives or is entitled to receive at any time any benefit provided or to be provided out of the sum or part of the sum;
 - (d) A or a person connected with A may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
 - (e) A or a person connected with A is able in any manner to control directly or indirectly the application of the sum or part of the sum.

In this subsection, in a case where the sum referred to in subsection (1)(a) arises to a company connected with A, references to a person connected with A do not include that company.
- (3) There arises to A for the purposes of this Chapter—
 - (a) the sum referred to in subsection (1)(a), or
 - (b) if the enjoyment condition in subsection (2)(a), (c), (d) or (e) is met in relation to part of the sum, that part of that sum, or
 - (c) if the enjoyment condition in subsection (2)(b) is met, such part of that sum as is equal to the amount by which the value of the assets referred to in that condition is increased.
- (4) Where a sum (or part of a sum) arises to A by virtue of this section, it arises to A at the time it arises to the person referred to in subsection (1)(a)(i) or (ii) (whether the enjoyment condition was met at that time or at a later date).
- (5) In determining whether any of the enjoyment conditions is met in relation to a sum or part of a sum—

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- (a) regard must be had to the substantial result and effect of all the relevant circumstances, and
 - (b) all benefits which may at any time accrue to a person as a result of the sum arising as specified in subsection (1)(a) must be taken into account, irrespective of—
 - (i) the nature or form of the benefits, or
 - (ii) whether the person has legal or equitable rights in respect of the benefits.
- (6) The enjoyment condition in subsection (2)(b), (c) or (d) is to be treated as not met if it would be met only by reason of A holding shares or an interest in shares in a company.
- (7) The enjoyment condition in subsection (2)(a) or (e) is to be treated as not met if the sum referred to in subsection (1)(a) arises to a company connected with A and—
- (a) the company is liable to pay corporation tax in respect of its profits and the sum is included in the computation of those profits, or
 - (b) paragraph (a) does not apply but—
 - (i) the company is a CFC and the exemption in Chapter 14 of Part 9A of TIOPA 2010 applies for the accounting period in which the sum arises, or
 - (ii) the company is not a CFC but, if it were, that exemption would apply for that period.

In this subsection “CFC” has the same meaning as in Part 9A of TIOPA 2010.

- (8) But subsections (6) and (7) do not apply if the sum referred to in subsection (1) (a) arises to the company referred to in subsection (1)(a)(i) or the person referred to in subsection (1)(a)(ii) as part of arrangements where—
- (a) it is reasonable to assume that in the absence of the arrangements the sum or part of the sum would have arisen to A or an individual connected with A, and
 - (b) it is reasonable to assume that the arrangements have as their main purpose, or one of their main purposes, the avoidance of a liability to pay income tax, capital gains tax, inheritance tax or corporation tax.
- (9) The condition in subsection (8)(b) is to be regarded as met in a case where the sum is applied directly or indirectly as an investment in a collective investment scheme.
- (10) Section 993 (meaning of “connected”) applies for the purposes of this section, but as if—
- (a) subsection (4) of that section were omitted, and
 - (b) partners in a partnership in which A is also a partner were not “associates” of A for the purposes of sections 450 and 451 of CTA 2010 (“control”).”
- (2) In ITA 2007, in section 809EZA(3)(c), omit “directly or indirectly”.
- (3) The amendments made by this section have effect in relation to—
- (a) sums other than carried interest arising on or after 22 October 2015, (whenever the arrangements under which the sums arise were made), and

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- (b) carried interest arising on or after 22 October 2015 under any arrangements,
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- (4) In subsection (3), “arise”, “arrangements” and “carried interest” have the same meanings as in Chapter 5E of Part 13 of ITA 2007.

Textual Amendments

- F1** Words in s. 45(3)(b) omitted (with effect in accordance with s. 37(2) of the amending Act) by virtue of Finance Act 2018 (c. 3), s. 37(1)(c)

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