

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Manufactured payments and repos

Overview

Chapter 4: Deemed manufactured payments

Overview

1756. This Chapter extends the scope of Chapter 2 (manufactured payments) to certain arrangements under which there is no actual manufactured payment.

Section 596: Deemed manufactured payments: stock lending arrangements

1757. This section, which is the first of a group of sections (sections 596 to 600) concerned with stock lending arrangements, deems the borrower in a stock lending arrangement to make a manufactured payment in certain circumstances. It is based on sections 736B, 736D and 231AA of ICTA.

1758. Usually, a stock lending arrangement will require the borrower to make a manufactured payment to the lender, in which case Chapter 2 (or, as the case may be, Schedule 23A to ICTA) will apply.

1759. Exceptionally, a stock lending arrangement may be structured in such a way that the lender is not entitled to receive a manufactured payment, even though the lender has forgone interest or dividends on the securities transferred. In such a case, this section deems the borrower to make a manufactured payment. In consequence, Chapter 2 applies and, in particular, if the securities are UK securities or overseas securities, then potentially either the borrower is subject to the main charge or the lender is subject to the reverse charge. But the borrower is denied any tax relief for the deemed manufactured payment.

1760. *Subsection (5)* provides that for the purposes of this section a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.

Section 597: Deemed interest: cash collateral under stock lending arrangements

1761. This section is a targeted anti-avoidance rule, deeming interest to arise to the borrower on collateral provided under certain stock lending arrangements. It is based on section 736C(1) to (7) and (11) of ICTA.

Section 598: Cash collateral under stock lending arrangements: supplementary

1762. This section supplements section 597. It is based on section 736C(8), (10) and (12) to (14) of ICTA.

1763. Section 736C(11) of ICTA provides that money includes money expressed in a currency other than sterling. This section omits it.

Section 599: Sections 597 and 598: quasi-stock lending arrangements and quasi-cash collateral

1764. This section extends the ambit of sections 597 and 598 to cover arrangements which, although achieving the same economic effect as a stock lending arrangement with cash collateral, fall outside either or both of the detailed definitions of “stock lending arrangement” and “cash collateral”. It is based on section 736D(4), (5), (7), (8) and (10) of ICTA.

Section 600: Meaning of “quasi-stock lending arrangements” and “quasi-cash collateral”

1765. This section defines the expressions “quasi-stock lending arrangements” and “quasi-cash collateral”. It is based on section 736D(1) to (3), (6) and (10) of ICTA.

Section 601: Repo cases in which deeming rules apply

1766. This section defines circumstances under which sale and repurchase arrangements (repos) are deemed, under section 602, to give rise to manufactured payments to which Chapter 2 applies. It is based on sections 231AA, 231AB, 737A, and 737B, of ICTA.
1767. If, as a matter of legal analysis, a transaction includes an amount which is a manufactured payment within Chapter 2 or, as the case may be, Schedule 23A to ICTA, then Chapter 2 (or, as the case may be, Schedule 23A) will apply to that amount. But if there is no separately identifiable amount then, as a matter of legal analysis, there may be no manufactured payment within Chapter 2 or Schedule 23A.
1768. Sale and repurchase arrangements could therefore be made under which no manufactured payment was payable and, instead, the pricing of the transaction reflected the fact that a payment of interest or dividend on the securities was receivable otherwise than by the seller. Such arrangements would be outside Chapter 2 and Schedule 23A. Chapter 4 plugs this gap by deeming the arrangement to include the making of a manufactured payment.

Section 602: Deemed manufactured payments: repos

1769. This section activates the rules about manufactured payments in a case in which section 601 is satisfied. It is based on sections 231AA, 231AB, 737A and 737C of ICTA.
1770. *Subsection (2)(b)* ensures that, in a repo of Real Estate Investment Trust shares, the deemed manufactured payment will in appropriate circumstances be an MPID.
1771. *Subsections (3) and (4)* prevent the holder of securities acquired under a repo from obtaining a tax deduction for a deemed payment representing interest or dividends unless that person is also the person to whom the securities were first transferred.

Section 603: Deemed deductions of tax

1772. This section treats deductions of tax as having been made in the circumstances specified in the section. It covers payments representative of PIDs, periodical payments of interest on UK securities and overseas dividends on overseas securities. It is based on section 737C of ICTA.
1773. This section is the first of a group of sections (sections 603 to 605) all of which are based on section 737C of ICTA (deemed manufactured payments: further provisions). Section 737A of ICTA (sale and repurchase of securities: deemed manufactured payments) interacts not only with Schedule 23A to ICTA (manufactured dividends and interest) but also with section 730A of ICTA (treatment of price differential on sale and repurchase

*These notes refer to the Income Tax Act 2007 (c.3)
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of securities). Section 737C of ICTA ensures that the interaction does not give rise to anomalies.

Section 604: Deemed increase in repurchase price: price differences under repos

1774. This section ensures that, if this Chapter deems a manufactured payment to be made, this is factored into the calculation of the price difference under Chapter 5. It is based on section 737C of ICTA.

Section 605: Deemed increase in repurchase price: other income tax purposes

1775. This section extends the circumstances in which the deemed increase in the repurchase price made by section 604 has effect. It is based on section 737C(11A) of ICTA.

Section 606: Interpretation of Chapter

1776. This section defines various terms. It is based on sections 231AA, 231AB and 737A to 737C of ICTA and section 139 of, and paragraph 4 of Schedule 17 to, FA 2006.