

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, SCHEDULE 20 is up to date with all changes known to be in force on or before 02 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 20

Section 41

#### LOAN RELATIONSHIPS: CONNECTED PARTIES

##### *Introduction*

1 Part 5 of CTA 2009 (loan relationships) is amended as follows.

##### *Section 374*

2 (1) Section 374 (late interest: connection between debtor and person standing in position of creditor) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (b), after “company” insert “ ( ”, and
- (b) insert at the end (not as part of paragraph (b))— “ and the condition in subsection (1A) is met. ”

(3) After that subsection insert—

“(1A) The condition is that C is—

- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.”

(4) Insert at the end—

“(3) For the purposes of this section—

- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

##### *Sections 375 and 376*

3 (1) Section 375 (late interest: loans to close companies by participators etc) is amended as follows.

(2) In subsection (1), insert at the end (not as part of paragraph (b))— “ and, where subsection (4A) applies, the non-qualifying territory condition is met. ”

(3) In subsections (3)(b) and (4)(b), after “resident” insert “ for tax purposes ”.

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- (4) After subsection (4) insert—
- “(4A) This subsection applies if C is a company; and the non-qualifying territory condition is that C is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.”
- 4 (1) Section 376 (interpretation of section 375) is amended as follows.
- (2) In subsection (5), for the definition of “resident” substitute—
- ““resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management, and”.
- (3) Insert at the end—
- “(6) For the purposes of section 375, a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management.”

*Section 377*

- 5 (1) Section 377 (late interest: party to loan relationship having major interest in other party) is amended as follows.
- (2) The existing provision becomes subsection (1) of that section.
- (3) In that subsection, omit the “and” at the end of paragraph (a) and insert at the end “and
- (c) the condition in subsection (2) is met.”
- (4) After that subsection insert—
- “(2) The condition is that C is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the actual accrual period, or
- (b) effectively managed in a non-taxing non-qualifying territory at any such time.
- (3) For the purposes of this section—
- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
- (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
- (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

*Section 407*

- 6 (1) Section 407 (postponement until redemption of debits for connected companies' deeply discounted securities) is amended as follows.

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- (2) In subsection (1)—
- (a) in paragraph (b), after “company” insert “ (“the creditor company” ,
  - (b) omit the “and” at the end of paragraph (d), and
  - (c) insert at the end “, and
  - (f) the condition in subsection (1A) is met.”
- (3) After that subsection insert—
- “(1A) The condition is that the creditor company is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the relevant period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.”
- (4) Insert at the end—
- “(6) For the purposes of this section—
- (a) “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
  - (b) a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management, and
  - (c) “resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

#### *Sections 409 and 410*

- 7 Section 409(1) (postponement until redemption of debits for close companies' deeply discounted securities)—
- (a) in paragraph (b), after “there is a person” insert “ ( ”, and
  - (b) insert at the end (not as part of paragraph (d))— “ and, where it applies, the non-qualifying territory condition is met. ”
- 8 (1) Section 410 (interpretation of section 409) is amended as follows.
- (2) In subsections (3)(b) and (4)(b), after “resident” insert “ for tax purposes ”.
- (3) After subsection (4) insert—
- “(4A) The non-qualifying territory condition applies if C is a company; and the non-qualifying territory condition is that C is—
- (a) resident for tax purposes in a non-qualifying territory at any time in the relevant period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.”
- (4) In subsection (5), for the definition of “resident” substitute—
- ““resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management, and”.
- (5) After that subsection insert—

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“(5A) For the purposes of this section, a non-qualifying territory is “non-taxing” if companies are not under its law liable to tax by reason of domicile, residence or place of management.”

*Commencement and transitional provision*

- 9
- (1) The amendments made by this Schedule have effect where the actual accrual period (within the meaning of Chapter 8 of Part 5 of CTA 2009), or the relevant period (within the meaning of section 407(1) or 409(1) of that Act), begins on or after 1 April 2009.
  - (2) But a company may elect that any or all of the amendments made by this Schedule do not have effect in relation to the first accounting period for which they would otherwise apply.
  - (3) However, no election may be made under sub-paragraph (2) in relation to an accounting period ending after 31 March 2011.
  - (4) An election under sub-paragraph (2) must be made in the corporation tax return for the accounting period in relation to which the election is to have effect.

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