

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Loan Relationships

Overview

Chapter 4: Continuity of treatment on transfers within groups or on reorganisations

Overview

1106. This Chapter sets out what happens when a loan relationship is transferred between members of a group and on a reorganisation.

Section 335: Introduction to Chapter

1107. This section acts as an introduction by setting out the three cases under which the continuity of treatment provisions in the Chapter apply and explaining how the Chapter is organised. It is based on paragraphs 12(1) and (8) and 12G(1) and (4) of Schedule 9 to FA 1996.

Section 336: Transfers of loans on group transactions

1108. This section specifies the transfers within the first case in section 335(1) where the continuity rules of the Chapter apply – transfers between group members. It is based on paragraph 12(1) and (3) of Schedule 9 to FA 1996.

Section 337: Transfers of loans on insurance business transfers

1109. This section specifies the transfer within the second case in section 335(1) where the continuity rules of the Chapter apply. It is based on paragraph 12(1), (4) and (5) of Schedule 9 to FA 1996.

1110. In *subsection (6)(b)* “corresponding category” means the category of asset in section 440(4) of ICTA as modified by regulation 11(3) of The [Overseas Life Insurance Companies Regulations 2006 \(SI 2006/3271\)](#).

Section 338: Meaning of company replacing another as party to loan relationship

1111. This section explains what is meant by one party replacing the other as a party to a loan relationship for the purposes of section 335. It is based on paragraph 12(6) to (7A) of Schedule 9 to FA 1996.

1112. *Subsections (3) and (4)* deal with the position where a company replaces another company as a creditor and *subsections (5) and (6)* where it replaces the other company as a debtor. The debtor rules will apply where a company has borrowed money but substitutes another group company as the debtor by novating the debt.

Section 339: Issues of new securities on certain cross-border reorganisations

1113. This section sets out the third case in section 335(1) where the continuity rules of the Chapter apply. This case is where section 135(3) of TCGA (exchange of securities for those in another company) applies (or would do but for section 116(5) of that Act) and certain conditions are met. It is based on paragraphs 12G(1), (3) and (6) and 12J(2) of Schedule 9 to FA 1996.

Section 340: Group transfers and transfers of insurance business: transfer at notional carrying value

1114. Under this section any gain or loss is disregarded where, as a result of a transaction or series of transactions referred to in section 335(1)(a) and (b) 335, one company replaces another as a party to a loan relationship. It is based on paragraph 12(1), (2ZA), (2), (2C) and (9) of Schedule 9 to FA 1996. The section provides that the transaction or series of transactions take place at book value (“carrying value”).

1115. The rules in this section regarding the bringing into account of debits and credits apply only where the company being replaced as party to the loan relationship accounts for the relationship under the amortised cost basis. Section 341 provides rules for where the company being replaced as a party to the loan relationship uses fair value accounting.

Section 341: Transferor using fair value accounting

1116. This section applies where the company making the transfer under section 340 uses fair value accounting as respects the loan relationship or the debits and credits to be brought into account rather than the amortised cost basis. It is based on 12(2A) to (2C) of Schedule 9 to FA 1996.

1117. The company which is being replaced as a party to the loan relationship brings in the asset or liability at fair value. The company becoming a party to the loan relationship is treated as acquiring the asset or liability for the same value it has in the accounts of the company being replaced.

Section 342: Issues of new securities on reorganisations: disposal at notional carrying value

1118. This section provides that where section 339 applies (the third case in section 335(1)), debits and credits are to be brought into account as if there were a disposal of the loan relationship at its carrying value in the accounts. It is based on section 12G(1) and (3) to (5) of Schedule 9 to FA 1996.

Section 343: Receiving company using fair value accounting

1119. This section provides the rule to apply in place of the rule in section 342 where fair value accounting is used by the company to which the issue of shares or debentures is made. It is based on paragraph 12G(5) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

Section 344: Introduction

1120. This section introduces the two following sections and provides that they apply where a company leaves a group within six years and an asset or liability was transferred to that company in circumstances where section 340 applies. It is based on paragraph 12A(1), (5), (5A) and (8) of Schedule 9 to FA 1996.

Section 345: Transferee leaving group otherwise than because of exempt distribution

1121. This section provides the first of the degrouping rules: where a company ceases to be a member of a group otherwise than as a result of an exempt distribution under

section 213(2) of ICTA. It is based on paragraph 12A(1) to (5) and (9) of Schedule 9 to FA 1996. Because section 213 of ICTA is designed to facilitate demergers, there is no degrouping charge where that section applies to exempt a distribution of the company's shares. This section deems there to have been a disposal and reacquisition at market value just before the company leaves the group and any resulting credit must be brought into account.

1122. *Subsection (4)* is designed to ensure parity of treatment between a loan relationship and a derivative contract that is being used to hedge it. The effect is to allow a debit on the loan relationship on deemed disposal if a credit is brought into account on the derivative contract.

Section 346: Transferee leaving group because of exempt distribution

1123. This section applies to bring in a charge, in certain circumstances, where one group member replaces another group member as a party to a loan relationship and ceases to be a group member as a result of an exempt distribution under section 213(2) of ICTA. It is based on paragraph 12A(3) to (9) of Schedule 9 to FA 1996.
1124. Where a company exploits a demerger for avoidance purposes by transferring within a five year period funds or assets to its members, a chargeable payment arises under section 214(2) of ICTA. Where such chargeable payments are made this section treats the company as disposing of, and immediately reacquiring, the loan relationship at fair value when the chargeable payment is made.

Section 347: Disapplication of Chapter where transferor party to avoidance

1125. This section applies where an asset or liability is likely to be transferred by the transferee company and the continuity provisions applying for sections 336 and 337 would otherwise apply. It is based on paragraph 12(2D) to (2F) of Schedule 9 to FA 1996. Where the transfer is under arrangements to which the transferor company is a party and the intention is to avoid tax, the continuity provisions of this Chapter which would otherwise apply do not.