

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Relationships treated as loan relationships etc

Overview

Chapter 10: Repos

Overview

1445. The rules in this Chapter provide for the tax treatment of repo transactions to follow their accounting treatment under generally accepted accounting practice (GAAP). These rules have been rewritten from Schedule 13 to FA 2007.

Section 542: Introduction to Chapter

1446. This section sets out the purpose of the Chapter and how it is arranged. It is based on paragraph 1(1) of Schedule 13 to FA 2007.

1447. The purpose of the Chapter is that arrangements involving the sale and subsequent purchase of securities that equate in substance to the lending of money by or to a company (with the securities in substance acting as collateral) are to be taxed in accordance with their economic substance and accounting treatment.

Section 543: Meaning of creditor repo

1448. This section provides the definition of creditor repo - that is, a repo from the point of view of the lender, the company that purchases the securities as collateral. It is based on paragraph 7 of Schedule 13 to FA 2007.

1449. The securities are purchased with cash that, although legally a purchase price, equates in substance to a loan. Commercially this is known as a “reverse repo”. It is intended to cover normal repos executed under standard market documentation (although since it does not require the lender to sell the securities back to “the borrower” it goes wider than this).

Section 544: Meaning of creditor quasi-repo

1450. This section provides the definition of creditor quasi-repo. It is based on paragraph 8 of Schedule 13 to FA 2007. A creditor quasi-repo is intended to cover arrangements that are economically equivalent to standard creditor repos but are on non-standard terms.

Section 545: Ignoring effect on lender etc of sale of securities

1451. This section contains the first of two operative rules that apply when a company (“the lender”) has a creditor repo or creditor quasi-repo. It is based on paragraph 9 of Schedule 13 to FA 2007.

1452. The rule is intended to secure that the lender is not taxed on any income that arises on the securities during the period of the repo and does not obtain tax relief for any manufactured payments made, so long as neither is recognised in determining the lender's profit or loss. This rule reflects the fact that for accounts purposes neither the income nor the payment will generally be recognised.

Section 546: Charge on lender for finance return in respect of the advance

1453. This section contains the second operative rule for creditor repos and creditor quasi-repos. It is based on paragraph 10 of Schedule 13 to FA 2007. It treats the financial asset as a loan relationship and the finance charge reflected in the accounts as deemed interest on that loan.

Section 547: Repo under arrangement designed to produce quasi-interest: tax avoidance

1454. This section is an anti-avoidance provision. It is based on paragraph 12 of Schedule 13 to FA 2007.

Section 548: Meaning of debtor repo

1455. This section introduces the concept of "debtor repo" – that is, a repo from the point of view of the borrower, the company that sells securities as collateral. It is based on paragraph 2 of Schedule 13 to FA 2007. It is intended to cover normal repos executed under standard market documentation (although since it does not require the borrower to buy the securities back from "the lender" it goes slightly wider than this).

Section 549: Meaning of debtor quasi-repo

1456. This section is the counterpart of section 544 and introduces the concept of "debtor quasi-repo" which is intended to cover arrangements that are economically equivalent to standard debtor repos but are on non-standard terms. It is based on paragraph 3 of Schedule 13 to FA 2007.

Section 550: Ignoring effect on borrower of sale of securities

1457. This section contains the first of two operative rules that apply when a company ("the borrower") has a debtor repo or debtor quasi-repo. It is based on paragraph 4 of Schedule 13 to FA 2007. It also contains a special rule that applies where a person has entered into a "relevant arrangement".
1458. It provides for the sale of securities by a company and the manufactured payment made by the other company in respect of the securities to be ignored. The borrower is taxed on the interest (or dividends) from the securities the borrower is selling and any manufactured interest the borrower receives representing that income is ignored.

Section 551: Relief for borrower for finance charges in respect of the advance

1459. This section sets out the second operative rule for debtor repos and debtor quasi-repos which is that the borrower obtains relief for any finance charge shown in its accounts that represents its cost of borrowing. It is based on paragraph 5 of Schedule 13 to FA 2007.

Section 552: General provisions about arrangements

1460. This section provides a number of rules for the purpose of applying other sections in this Chapter. It is based on paragraph 14(5) to (7) of Schedule 13 to FA 2007.

Section 553: Persons buying or selling for others

1461. This section ensures that where the sale or purchase of securities is made by a person for the benefit of another, the rules operate by reference to beneficial ownership. It is based on paragraph 14(3) of Schedule 13 to FA 2007.

Section 554: Power to modify this Chapter

1462. This section contains a power to modify some of the provisions of the Chapter to deal with non-standard repos or cases involving redemption arrangements. It is based on paragraph 15(1), (6), (7) and (9) of Schedule 13 to FA 2007.

Section 555: Cases where section 554 applies: non-standard repos

1463. This section sets out the situations when the powers under section 554 may be used. It is based on paragraph 15(2) to (5) of Schedule 13 to FA 2007.

Section 556: Meaning of securities and similar securities

1464. This section explains the meaning of “securities” for the other sections. It is based on paragraph 14 of Schedule 13 to FA 2007.

Section 557: Meaning of person receiving an asset

1465. This section provides that receiving an asset or payments in respect of an asset includes obtaining the value of, or a benefit from, an asset, whether directly or indirectly. It is based on paragraph 14(2) of Schedule 13 to FA 2007.

Section 558: Interpretation of accounting expressions

1466. This section explains accounting expressions used in the Chapter. It is based on paragraph 14(9) and (11) of Schedule 13 to FA 2007.

Section 559: Minor definitions

1467. This section provides further definitions for expressions used in this Chapter. It is based on paragraph 14(1) of Schedule 13 to FA 2007.