



Corporation Tax Act 2009

2009 CHAPTER 4

PART 5

LOAN RELATIONSHIPS

CHAPTER 1

INTRODUCTION

Introduction

292 Overview of Part

- (1) This Part sets out how profits and deficits arising to a company from its loan relationships are brought into account for corporation tax purposes.
- (2) For the meaning of “loan relationship” see section 302 and Part 6 (relationships treated as loan relationships etc).
- (3) For how such profits and deficits are calculated and brought into account, see—
 - (a) section 296 (profits and deficits to be calculated using credits and debits given by this Part),
 - (b) section 297 (trading credits and debits to be brought into account under Part 3),
 - (c) section 299 (charge to tax on non-trading profits),
 - (d) section 300 (method of bringing non-trading deficits into account),
 - (e) section 301 (calculation of non-trading profits and deficits from loan relationships: non-trading credits and debits), and
 - (f) Chapter 16 (non-trading deficits).
- (4) For the priority of this Part for corporation tax purposes, see Chapter 17.
- (5) This Part also contains the following Chapters (which mainly relate to the amounts to be brought into account for the purposes of this Part)—

Status: This is the original version (as it was originally enacted).

- (a) Chapter 3 (the credits and debits to be brought into account: general),
 - (b) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations),
 - (c) Chapter 5 (connected companies relationships: introduction and general),
 - (d) Chapter 6 (connected companies relationships: impairment losses and releases of debts),
 - (e) Chapter 7 (group relief claims involving impaired or released consortium debts),
 - (f) Chapter 8 (connected parties relationships: late interest),
 - (g) Chapter 9 (partnerships involving companies),
 - (h) Chapter 10 (insurance companies),
 - (i) Chapter 11 (other special kinds of company),
 - (j) Chapter 12 (special rules for particular kinds of securities),
 - (k) Chapter 13 (European cross-border transfers of business),
 - (l) Chapter 14 (European cross-border mergers),
 - (m) Chapter 15 (tax avoidance),
 - (n) Chapter 18 (general and supplementary provisions).
- (6) This Part needs to be read with Part 19 (general exemptions).

293 Construction of references to profits or losses from loan relationships

- (1) In this Part references to profits or losses from loan relationships include references to profits or losses from related transactions.
- (2) For the meaning of “related transaction” see section 304.
- (3) Except where the context indicates otherwise, in this Part references to profits or losses from loan relationships include references to profits or losses of a capital nature.

294 Matters treated as loan relationships

- (1) Part 6 deals with matters treated for some or all purposes as loan relationships or rights, payments or profits under loan relationships.
- (2) Except where the context indicates otherwise, references to this Part in this Act and elsewhere in the Tax Acts include references to Part 6.

How profits and deficits from loan relationships are dealt with

295 General rule: profits arising from loan relationships chargeable as income

- (1) The general rule for corporation tax purposes is that all profits arising to a company from its loan relationships are chargeable to tax as income in accordance with this Part.
- (2) But see section 465 (exclusion of distributions except in tax avoidance cases).

296 Profits and deficits to be calculated using credits and debits given by this Part

Profits and deficits arising to a company from its loan relationships are to be calculated using the credits and debits given by this Part.

297 Trading credits and debits to be brought into account under Part 3

- (1) This section applies so far as in any accounting period a company is a party to a loan relationship for the purposes of a trade it carries on.
- (2) The credits in respect of the relationship for the period are treated as receipts of the trade which are to be brought into account in calculating its profits for that period.
- (3) The debits in respect of the relationship for the period are treated as expenses of the trade which are deductible in calculating those profits.
- (4) So far as subsection (3) provides for any amount to be deductible, it has effect despite anything in—
 - (a) section 53 (capital expenditure),
 - (b) section 54 (expenses not wholly and exclusively for trade and unconnected losses), or
 - (c) section 59 (patent royalties).
- (5) This section is subject to—
 - (a) section 330 (debits in respect of pre-trading expenditure),
 - (b) section 482(1) (under which credits or debits to be brought into account under Chapter 2 of Part 6 (relevant non-lending relationships) are treated as non-trading credits or debits), and
 - (c) section 494(2A) of ICTA (under which some credits and debits affecting ring-fence profits from petroleum extraction activities are treated as non-trading credits and debits).

298 Meaning of trade and purposes of trade

- (1) For the purposes of this Part a company is taken to be a party to a creditor relationship for the purposes of a trade it carries on only if it is a party to the relationship in the course of activities forming an integral part of the trade.
- (2) For the meaning of “creditor relationship”, see section 302(5).
- (3) For the purposes of this Part activities carried on by a company in the course of—
 - (a) any mutual trading,
 - (b) any mutual insurance or other mutual business which is not life assurance business, or
 - (c) any basic life assurance and general annuity business,are treated as not constituting the whole or any part of a trade.
- (4) Subsection (3) applies for the purposes of any other relevant enactment as it applies for the purposes of this Part.
- (5) In subsection (4) “relevant enactment” means so much of any enactment as contains provision by reference to which amounts are to be brought into account for the purposes of this Part.

299 Charge to tax on non-trading profits

- (1) The charge to corporation tax on income applies to any non-trading profits which a company has in respect of its loan relationships.

Status: This is the original version (as it was originally enacted).

- (2) For the meaning of a company having such profits and how they are calculated, see section 301.

300 Method of bringing non-trading deficits into account

- (1) Any non-trading deficit which a company has from its loan relationships must be brought into account in accordance with Chapter 16 (non-trading deficits).
- (2) For the meaning of a company having such a deficit and how it is calculated, see section 301.
- (3) This section and Chapter 16 apply even if none of the company's loan relationships is regarded as a source of income as a result of this Part.

301 Calculation of non-trading profits and deficits from loan relationships: non-trading credits and debits

- (1) Whether a company has non-trading profits or a non-trading deficit from its loan relationships for an accounting period is determined as follows, using the non-trading credits and non-trading debits given by this Part for the accounting period.
- (2) In this Part—
- (a) “non-trading credits” means credits for any accounting period in respect of a company's loan relationships that are not brought into account under section 297(2), and
 - (b) “non-trading debits” means debits for any accounting period in respect of a company's loan relationships that are not brought into account under section 297(3).
- (3) But see also—
- (a) section 330 (debts in respect of pre-trading expenditure), and
 - (b) section 482(1) (under which credits or debits to be brought into account under Chapter 2 of Part 6 (relevant non-lending relationships) are treated as non-trading credits or debits).
- (4) A company has non-trading profits for an accounting period from its loan relationships if the non-trading credits for the period exceed the non-trading debits for the period or there are no such debits.
- (5) The non-trading profits are equal to those credits, less any such debits.
- (6) A company has a non-trading deficit for an accounting period from its loan relationships if the non-trading debits for the period exceed the non-trading credits for the period or there are no such credits.
- (7) The non-trading deficit is equal to those debits, less any such credits.

CHAPTER 2

BASIC DEFINITIONS

302 “Loan relationship”, “creditor relationship”, “debtor relationship”

- (1) For the purposes of the Corporation Tax Acts a company has a loan relationship if—
 - (a) the company stands in the position of a creditor or debtor as respects any money debt (whether by reference to a security or otherwise), and
 - (b) the debt arises from a transaction for the lending of money.
- (2) References to a loan relationship and to a company being a party to a loan relationship are to be read accordingly.
- (3) For cases where this Part applies as if a relationship were a loan relationship despite the money debt not arising from a transaction for the lending of money see Chapter 2 of Part 6 (relevant non-lending relationships).
- (4) See also the following provisions of Part 6 (under which other matters are treated as loan relationships or rights, payments or profits under loan relationships)—
 - (a) Chapter 3 (OEICs, unit trusts and offshore funds),
 - (b) Chapter 4 (building societies),
 - (c) Chapter 5 (industrial and provident societies),
 - (d) Chapter 6 (alternative finance arrangements),
 - (e) Chapter 7 (shares with guaranteed returns etc),
 - (f) Chapter 8 (returns from partnerships),
 - (g) Chapter 9 (manufactured interest etc),
 - (h) Chapter 10 (repos), and
 - (i) Chapter 11 (investment life insurance contracts).
- (5) In this Part “creditor relationship”, in relation to a company, means any loan relationship of the company where it stands in the position of a creditor as respects the debt in question.
- (6) In this Part “debtor relationship”, in relation to a company, means any loan relationship of the company where it stands in the position of a debtor as respects the debt in question.

303 “Money debt”

- (1) For the purposes of this Part a money debt is a debt which—
 - (a) falls to be settled—
 - (i) by the payment of money,
 - (ii) by the transfer of a right to settlement under a debt which is itself a money debt, or
 - (iii) by the issue or transfer of any share in any company,
 - (b) has at any time fallen to be so settled, or
 - (c) may at the option of the debtor or the creditor fall to be so settled.
- (2) For the purposes of subsection (1) any option exercisable by either party to settle the debt in any other way than is mentioned in subsection (1)(a) is ignored.

Status: This is the original version (as it was originally enacted).

- (3) A money debt is a debt arising from a transaction for the lending of money for the purposes of this Part if an instrument is issued by any person for the purpose of representing—
 - (a) security for the debt, or
 - (b) the rights of a creditor in respect of the debt.
- (4) A debt does not arise from a transaction for the lending of money for the purposes of this Part so far as it arises from rights conferred by shares in a company.
- (5) But see the following provisions (as a result of which some such rights are within this Chapter)—
 - (a) Chapter 3 of Part 6 (OEICs, unit trusts and offshore funds),
 - (b) Chapter 7 of that Part (shares with guaranteed returns etc).
- (6) For the meaning of “share” see section 476(1).

304 “Related transaction”

- (1) In this Part “related transaction”, in relation to a loan relationship, means any disposal or acquisition (in whole or in part) of rights or liabilities under the relationship.
- (2) For this purpose the cases where there is taken to be such a disposal and acquisition include those where rights or liabilities under the loan relationship are transferred or extinguished by any sale, gift, exchange, surrender, redemption or release.

305 Payments, interest, rights and liabilities under a loan relationship

- (1) For the purposes of this Part references to payments or interest under a loan relationship are references to payments or interest paid or payable in pursuance of any of the rights or liabilities under that relationship.
- (2) For the purposes of this Part references to rights or liabilities under a loan relationship are references to any of the rights or liabilities under the arrangements as a result of which that relationship subsists.
- (3) For the purposes of this Part rights or liabilities under a loan relationship are taken to include the rights or liabilities attached to any security that is issued in relation to the money debt in question (and so is a security representing that relationship).
- (4) But for the treatment of funding bonds see—
 - (a) section 413 (issue of funding bonds), and
 - (b) section 414 (redemption of funding bonds).

CHAPTER 3

THE CREDITS AND DEBITS TO BE BROUGHT INTO ACCOUNT: GENERAL

Introduction

306 Overview of Chapter

- (1) This Chapter contains rules of general application about the credits and debits to be brought into account for the purposes of this Part.
- (2) In particular, it—
 - (a) provides for the application of generally accepted accounting practice in determining the amounts to be brought into account as credits and debits and makes provision where accounts do not comply with that practice (see sections 307 to 312),
 - (b) makes provision about bases of accounting (see sections 313 and 314),
 - (c) provides for adjustments on changes of accounting policy (see sections 315 to 319),
 - (d) sets out some general rules that differ from generally accepted accounting practice (see sections 320 to 327),
 - (e) provides for exchange gains and losses to be included in the profits and losses of a company from loan relationships (see section 328),
 - (f) makes provision about debits for pre-loan relationship, abortive or pre-trading expenses (see sections 329 and 330),
 - (g) makes provision for companies ceasing to be a party to loan relationships (see sections 331 and 332), and
 - (h) provides for deemed assignments where a company's residence or operations move abroad (see sections 333 and 334).
- (3) For further rules about the credits and debits to be brought into account in particular situations and cases, see—
 - (a) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations),
 - (b) Chapter 5 (connected companies relationships: introduction and general),
 - (c) Chapter 6 (connected companies relationships: impairment losses and releases of debts),
 - (d) Chapter 7 (group relief claims involving impaired or released consortium debts),
 - (e) Chapter 8 (connected parties relationships: late interest),
 - (f) Chapter 9 (partnerships involving companies),
 - (g) Chapter 10 (insurance companies),
 - (h) Chapter 11 (other special kinds of company),
 - (i) Chapter 12 (special rules for particular kinds of securities),
 - (j) Chapter 13 (European cross-border transfers of business),
 - (k) Chapter 14 (European cross-border mergers), and
 - (l) Chapter 15 (tax avoidance).

General principles about the bringing into account of credits and debits

307 General principles about the bringing into account of credits and debits

- (1) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes.
- (2) The general rule is that the amounts to be brought into account by a company as credits and debits for any period for the purposes of this Part are those that are recognised in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.
- (3) The credits and debits to be brought into account in respect of a company's loan relationships are the amounts that, when taken together, fairly represent for the accounting period in question—
 - (a) all profits and losses of the company that arise to it from its loan relationships and related transactions (excluding interest or expenses),
 - (b) all interest under those relationships, and
 - (c) all expenses incurred by the company under or for the purposes of those relationships and transactions.
- (4) Expenses are only treated as incurred as mentioned in subsection (3)(c) if they are incurred directly—
 - (a) in bringing any of the loan relationships into existence,
 - (b) in entering into or giving effect to any of the related transactions,
 - (c) in making payments under any of those relationships or as a result of any of those transactions, or
 - (d) in taking steps to ensure the receipt of payments under any of those relationships or in accordance with any of those transactions.
- (5) For the treatment of pre-loan relationship and abortive expenses, see section 329.
- (6) Subsection (2) is subject to the provisions of this Part and, in particular, subsection (3).

Amounts recognised in determining a company's profit or loss

308 Amounts recognised in determining a company's profit or loss

- (1) References in this Part to an amount recognised in determining a company's profit or loss for a period are references to an amount recognised in—
 - (a) the company's profit and loss account, income statement or statement of comprehensive income for that period,
 - (b) the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings for that period, or
 - (c) any other statement of items taken into account in calculating the company's profits and losses for that period.
- (2) If, in accordance with generally accepted accounting practice, an amount is shown as a prior period adjustment in any statement within subsection (1), it must be brought into account for the purposes of this Part in calculating the company's profits and losses for the period to which the statement relates.

- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.

309 Companies without GAAP-compliant accounts

- (1) If a company—
- (a) draws up accounts which are not GAAP-compliant accounts, or
 - (b) does not draw up accounts at all,
- this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) Accordingly, references in this Part to amounts recognised for accounting purposes are references to the amounts that would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.
- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.
- (4) In this section “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

310 Power to make regulations about recognised amounts

- (1) The Treasury may by regulations—
- (a) make provision excluding from section 308(1) or (2) amounts of a specified description, and
 - (b) make provision for or in connection with bringing into account in specified circumstances amounts in relation to which section 308(1) or (2) does not have effect as a result of regulations under paragraph (a).
- (2) The regulations may provide that section 308(1) or (2) does not apply to specified amounts in a period of account so far as they derive from or otherwise relate to amounts brought into account in a specified way in a previous period of account.
- (3) The regulations may—
- (a) make different provision for different cases, and
 - (b) make provision subject to an election or to other specified conditions.
- (4) The regulations may apply to periods of account beginning before they are made, but not earlier than the beginning of the calendar year in which they are made.
- (5) The power to make regulations under this section does not apply to exchange gains or losses (but see section 328(4) to (7)).

311 Amounts not fully recognised for accounting purposes: introduction

- (1) Section 312 applies for the purpose of determining the credits and debits which a company is to bring into account for a period for the purposes of this Part in the following case.
- (2) The case is where—
- (a) the company is, or is treated as, a party to a creditor relationship in the period,

Status: This is the original version (as it was originally enacted).

- (b) an amount is not fully recognised for the period in respect of the relationship as a result of the application of generally accepted accounting practice in relation to the relationship (see subsection (6)), and
 - (c) condition A or B is met.
- (3) Condition A is that—
- (a) the company is or is treated as a party to a debtor relationship in the period, and
 - (b) an amount is not fully recognised for the period in respect of the debtor relationship as a result of the application of generally accepted accounting practice in relation to the relationship.
- (4) Condition B is that—
- (a) an amount (a “relevant capital contribution”) has at any time been contributed to the company which forms part of its capital for the period, and
 - (b) an amount is not fully recognised for the period in respect of the relevant capital contribution as a result of the application of generally accepted accounting practice in relation to the contribution.
- (5) It does not matter for the purposes of subsection (4) whether the contribution forms part of the company’s share capital or other capital for the period.
- (6) For the purposes of this section an amount is not fully recognised for a period in respect of a relationship of a company or a relevant capital contribution to it if—
- (a) no amount in respect of the relationship or contribution is recognised in determining its profit or loss for the period, or
 - (b) an amount is so recognised in respect of only part of the relationship or contribution.

312 Determination of credits and debits where amounts not fully recognised

- (1) In determining the credits and debits which a company is to bring into account for the period referred to in section 311(1) for the purposes of this Part in respect of—
- (a) the creditor relationship mentioned in section 311(2), or
 - (b) in a case where condition A in section 311(3) is met, the debtor relationship by reference to which that condition is met,
- the assumption in subsection (2) is to be made.
- (2) The assumption is that an amount in respect of the whole of the relationship in question is recognised in determining the company’s profit or loss for the period.
- (3) But the amount of any debits to be brought into account by the company for a period as a result of this section applying in respect of its debtor relationships must not exceed the amount of any credits to be brought into account by it for the period as a result of this section applying in respect of its creditor relationships.
- (4) Subsection (5) applies in any case where—
- (a) apart from this section any credits or debits are brought into account for a period for the purposes of this Part by the company in respect of a loan relationship, and
 - (b) the relationship is a creditor relationship within subsection (1)(a) or a debtor relationship within subsection (1)(b).

- (5) The credits and debits which are to be so brought into account as a result of this section are to be determined on the same basis of accounting as that on which the credits or debits mentioned in subsection (4)(a) are determined.
- (6) In any other case, the credits and debits which are to be so brought into account as a result of this section are to be determined on an amortised cost basis of accounting.

Accounting bases

313 Basis of accounting: “amortised cost basis”, “fair value accounting” and “fair value”

- (1) The general rule is that the amounts to be brought into account by a company as credits and debits for any period of account for the purposes of this Part may be determined on any basis of accounting that is in accordance with generally accepted accounting practice and, in particular, an amortised cost basis of accounting or fair value accounting.
- (2) But subsection (1) is subject to sections 307(3) and (4) and the following provisions (which require a particular accounting basis to be used)—
 - (a) section 312(5) and (6) (determination of credits and debits where amounts not fully recognised for accounting purposes),
 - (b) section 349(2) (application of amortised cost basis to connected companies relationships),
 - (c) section 382(2) (company partners using fair value accounting),
 - (d) section 399(2) (index-linked gilt-edged securities: application of fair value accounting),
 - (e) section 453(2) (application of fair value accounting where connected parties derive benefit from creditor relationships),
 - (f) section 454(4) (application of fair value accounting: reset bonds etc),
 - (g) section 482(2) (application of amortised cost basis of accounting to discounts arising from a money debt under a relevant non-lending relationship),
 - (h) section 490(3) (holdings in OEICs, unit trusts and offshore funds: application of fair value accounting), and
 - (i) section 534(1) (application of fair value accounting where section 523 applies).
- (3) See also section 314.
- (4) In this Part “amortised cost basis of accounting”, in relation to a company’s loan relationship, means a basis of accounting under which an asset or liability representing the loan relationship is shown in the company’s accounts at cost adjusted for cumulative amortisation and any impairment, repayment or release.
- (5) In this Part “fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company’s balance sheet at their fair value.
- (6) In this Part “fair value”, in relation to a loan relationship of a company, means the amount which, at the time as at which the value is to be determined, is the amount which the company would obtain from or, as the case may be, would have to pay to a knowledgeable and willing person dealing at arm’s length for—
 - (a) the transfer of all the company’s rights under the relationship, and

Status: This is the original version (as it was originally enacted).

- (b) the release of all the company's liabilities under it.

314 Power to make regulations about changes from amortised cost basis

- (1) This section applies if the credits or debits to be brought into account for the purposes of this Part in respect of assets or liabilities of a company—
 - (a) are required in accordance with generally accepted accounting practice to be dealt with for accounting purposes using fair value accounting, and
 - (b) were previously dealt with for those purposes on an amortised cost basis.
- (2) The Treasury may by regulations provide that the credits or debits must continue to be determined on an amortised cost basis of accounting.
- (3) The regulations may—
 - (a) make different provision for different cases,
 - (b) make incidental, supplemental, consequential and transitional provision and savings, and
 - (c) make provision subject to an election or to other specified conditions.

Adjustments on change of accounting policy

315 Introduction to sections 316 to 319

- (1) Sections 316 to 319 apply if—
 - (a) there is a change of accounting policy in drawing up a company's accounts from one period of account to the next, and
 - (b) the accounting policy in each of those periods accords with the law and practice applicable in relation to that period.
- (2) In this section and sections 316 to 319—
 - (a) the first of those periods of account is referred to as “the earlier period”, and
 - (b) the next is referred to as “the later period”.
- (3) Sections 316 to 319 apply, in particular, if—
 - (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
 - (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.
- (4) For a case where this section and sections 316 to 318 apply as if a change of accounting policy had occurred, see section 416(5) (election for application of sections 415 and 585).

316 Change of accounting policy involving change of value

- (1) If there is an increase in the carrying value of an asset representing a loan relationship of the company between—
 - (a) the end of the earlier period, and
 - (b) the beginning of the later period,

Status: This is the original version (as it was originally enacted).

a credit equal to the increase must be brought into account for the purposes of this Part for the later period.

- (2) If there is a decrease in the carrying value of such an asset between—
 - (a) the end of the earlier period, and
 - (b) the beginning of the later period,a debit equal to the decrease must be brought into account for the purposes of this Part for the later period.
- (3) If there is an increase in the carrying value of a liability representing a loan relationship of the company between—
 - (a) the end of the earlier period, and
 - (b) the beginning of the later period,a debit equal to the increase must be brought into account for the purposes of this Part for the later period.
- (4) If there is a decrease in the carrying value of such a liability between—
 - (a) the end of the earlier period, and
 - (b) the beginning of the later period,a credit equal to the decrease must be brought into account for the purposes of this Part for the later period.
- (5) This section does not apply so far as such a credit or debit as is mentioned in this section falls to be brought into account apart from this section.

317 Carrying value

- (1) In section 316 “carrying value” means the carrying value of the asset or liability recognised for accounting purposes, except as provided in subsection (4).
- (2) For the purposes of this section the “carrying value” of an asset or liability includes amounts recognised for accounting purposes in relation to the loan relationship in respect of—
 - (a) accrued amounts,
 - (b) amounts paid or received in advance, or
 - (c) impairment losses (including provisions for bad or doubtful debts).
- (3) For the meaning of “impairment loss” see section 476(1).
- (4) In determining the profits and losses to be recognised in determining the carrying value of the asset or liability for the purposes of this section, the provisions specified in subsection (5) apply as they apply for the purposes of determining the credits and debits to be brought into account under this Part.
- (5) Those provisions are—
 - (a) sections 340 and 341 (continuity of treatment on group transfers and transfers of insurance business),
 - (b) section 349(2) (application of amortised cost basis of accounting to connected companies relationships),
 - (c) section 354 (exclusion of debits for impaired or released connected companies debts),

Status: This is the original version (as it was originally enacted).

- (d) section 360 (exclusion of credits on reversal of impairments of connected companies debts),
- (e) sections 361 to 363 (deemed debt releases on impaired debts becoming held by connected company),
- (f) Chapter 8 (connected parties relationships: late interest),
- (g) sections 399 and 400 (treatment of index-linked gilt-edged securities),
- (h) section 404 (restriction on deductions etc relating to FOTRA securities),
- (i) sections 409 to 412 (deeply discounted securities of close companies),
- (j) section 415(2) (loan relationships with embedded derivatives),
- (k) sections 422 and 423 (transfer of loan relationships on European cross-border transfers of business),
- (l) sections 433 and 434 (transfer of loan relationships on European cross-border mergers),
- (m) section 454(4) (accounting method where rate of interest is reset),
- (n) section 465 (exclusion of distributions except in tax avoidance cases),
- (o) paragraph 62 of Schedule 2 (disregard of pre-2005 disallowed debits), and
- (p) paragraph 69 of Schedule 2 (5½% Treasury Stock 2008-2012 not redeemed before 6 April 2009).

318 Change of accounting policy following cessation of loan relationship

- (1) This section applies if—
 - (a) the company has ceased to be a party to a loan relationship in an accounting period (“the cessation period”),
 - (b) section 331 (company ceasing to be party to loan relationship) applied to the cessation, and
 - (c) there is a difference between the amount outstanding in respect of the loan relationship (see subsection (5))—
 - (i) at the end of the earlier period, and
 - (ii) at the beginning of the later period.
- (2) In the case of an increase in that amount—
 - (a) if the company was the creditor under the loan relationship, it must bring into account for the later period a credit equal to the increase for the purposes of this Part, and
 - (b) if the company was the debtor under the loan relationship, it must bring into account for the later period a debit equal to the increase for the purposes of this Part.
- (3) In the case of a decrease in that amount—
 - (a) if the company was the creditor under the loan relationship, it must bring into account for the later period a debit equal to the decrease for the purposes of this Part, and
 - (b) if the company was the debtor under the loan relationship, it must bring into account for the later period a credit equal to the decrease for the purposes of this Part.
- (4) Subsections (2) and (3) do not apply so far as the credit or debit falls to be brought into account apart from this section.

- (5) In this section “the amount outstanding in respect of the loan relationship” means so much of the recognised deferred income or recognised deferred loss from the loan relationship as has not been represented by credits or debits brought into account under this Part in respect of the relationship.
- (6) In subsection (5)—
- “recognised deferred income”, in relation to a loan relationship, means the amount recognised in the company’s balance sheet in accordance with generally accepted accounting practice as deferred income in respect of the profits which arose from the relationship or a related transaction in the cessation period, and
- “recognised deferred loss”, in relation to a loan relationship, means the amount so recognised as deferred loss in respect of the losses which so arose.

319 General power to make regulations about changes in accounting policy

- (1) The Treasury may by regulations make provision for cases where there is a change of accounting policy in drawing up a company’s accounts from one period of account to the next which affects the amounts to be brought into account for accounting purposes in respect of the company’s loan relationships.
- (2) The regulations may provide for any credits or debits which would otherwise be brought into account for the purposes of this Part—
- not to be brought into account,
 - to be brought into account only to a prescribed extent, or
 - to be brought into account over a prescribed period or in prescribed circumstances.
- (3) Regulations under this section may, in particular, modify the operation of sections 315 to 318.
- (4) The regulations may make—
- different provision for different cases, and
 - incidental, supplemental, consequential and transitional provision and savings.
- (5) The regulations may apply to periods of account beginning before they are made, but not earlier than the beginning of the calendar year in which they are made.

Rules differing from generally accepted accounting practice

320 Credits and debits treated as relating to capital expenditure

- (1) This section applies if generally accepted accounting practice allows a credit or debit for an accounting period in respect of a company’s loan relationship to be treated in the company’s accounts as an amount brought into account in determining the value of a fixed capital asset or project.
- (2) Despite that treatment, the credit or debit is to be brought into account for the purposes of this Part, for the accounting period in which it is given, in the same way as a credit or debit which is brought into account in determining the company’s profit or loss for that period in accordance with generally accepted accounting practice.

Status: This is the original version (as it was originally enacted).

- (3) But subsection (2) does not apply to a debit which is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Part 8 (intangible fixed assets).
- (4) Subsections (5) and (6) apply if a debit is brought into account as mentioned in subsection (2).
- (5) No debit may be brought into account in respect of the writing down of so much of the value of the asset or project as is attributable to that debit.
- (6) No debit may be brought into account in respect of so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.

321 Credits and debits recognised in equity

- (1) This section applies if in accordance with generally accepted accounting practice a credit or debit for a period in respect of a company's loan relationship—
 - (a) is recognised in equity or shareholders' funds, and
 - (b) is not recognised in any of the statements mentioned in section 308(1).
- (2) The credit or debit is to be brought into account for the period for the purposes of this Part in the same way as a credit or debit which is brought into account in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

322 Release of debts: cases where credits not required to be brought into account

- (1) This section applies if—
 - (a) a liability to pay an amount under a company's debtor relationship is released, and
 - (b) the release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of that relationship.
- (2) The company is not required to bring into account a credit in respect of the release for the purposes of this Part if condition A, B or C is met.
- (3) Condition A is that the release is part of a statutory insolvency arrangement.
- (4) Condition B is that the release is—
 - (a) in consideration of shares forming part of the ordinary share capital of the debtor company, or
 - (b) in consideration of any entitlement to such shares.
- (5) Condition C is that—
 - (a) the debtor company meets one of the insolvency conditions (see subsection (6)), and
 - (b) the debtor relationship is not a connected companies relationship (see section 348).
- (6) For the purposes of this section a company meets the insolvency conditions if—
 - (a) it is in insolvent liquidation,
 - (b) it is in insolvent administration,
 - (c) it is in insolvent administrative receivership,

Status: This is the original version (as it was originally enacted).

- (d) an appointment of a provisional liquidator is in force in relation to the company under section 135 of the Insolvency Act 1986 (c. 45) or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (e) under the law of a country or territory outside the United Kingdom circumstances corresponding to those mentioned in paragraph (a), (b), (c) or (d) exist.
- (7) Section 323 applies for the interpretation of subsection (6).
- (8) For further cases where no credit in respect of the release is to be brought into account, see—
- (a) section 358 (exclusion of credits on release of connected companies debts: general), and
 - (b) section 359 (exclusion of credits on release of connected companies debts during creditor’s insolvency).

323 Meaning of expressions relating to insolvency etc

- (1) For the purposes of section 322(6) a company is in insolvent liquidation during the period—
- (a) beginning when it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, and
 - (b) ending when the winding up is completed or otherwise brought to an end (whether under paragraph 37 or 38 of Schedule B1 to the Insolvency Act 1986 (c. 45) or otherwise).
- (2) In subsection (1) “liquidation” has the meaning given in—
- (a) section 247(2) of the Insolvency Act 1986, or
 - (b) Article 6(2) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) For the purposes of section 322(6) a company in administration is in insolvent administration if it entered administration under—
- (a) Schedule B1 to the Insolvency Act 1986, or
 - (b) Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
- at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of the administration.
- (4) For the purposes of section 322(6) a company is in insolvent administrative receivership if—
- (a) an appointment of an administrative receiver is in force in relation to the company, and
 - (b) the company was put into administrative receivership at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of administrative receivership.
- (5) In subsection (4) “administrative receiver” has the same meaning as in—
- (a) Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 (c. 45), or
 - (b) Part 4 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

and “administrative receivership” is to be read accordingly.

324 Restriction on debits resulting from revaluation

- (1) No debit is to be brought into account for the purposes of this Part as a result of the revaluation of an asset representing a creditor relationship of a company except—
 - (a) an impairment loss, or
 - (b) a debit resulting from a release by the company of any liability under the relationship.
- (2) For the meaning of “impairment loss” see section 476(1).
- (3) The reference in subsection (1) to revaluation of an asset includes any case where a provision or allowance is made by the company reducing the carrying value of the asset or of a group of assets including the asset in question.
- (4) This section does not affect the debits to be brought into account in respect of exchange gains or losses.
- (5) This section does not apply if fair value accounting is used.

325 Restriction on credits resulting from reversal of disallowed debits

- (1) No credit is to be brought into account for the purposes of this Part in respect of the reversal of a debit disallowed by section 324(1).
- (2) This section does not apply if fair value accounting is used.
- (3) See also paragraph 61 of Schedule 2 (restriction on bringing into account credits resulting from reversal of debits disallowed in a period of account beginning before 1 January 2005).

326 Writing off government investments

- (1) This section applies if a government investment in a company is written off by the release of a liability to pay any amount under a debtor relationship of the company.
- (2) The company is not required to bring into account a credit for the purposes of this Part in respect of the release.
- (3) Section 400(7) and (8) of ICTA (write-off of government investment) applies for interpreting the reference in subsection (1) to a government investment in a company being written off as it applies for the purposes of section 400(1) of that Act.

327 Disallowance of imported losses etc

- (1) This section applies for an accounting period of a company (“the loss period”) if—
 - (a) apart from this section, a loss arising in connection with a loan relationship of the company would fall to be brought into account for the purposes of this Part, and
 - (b) the loss is wholly or partly referable to a time when the relationship was not subject to United Kingdom taxation.

Status: This is the original version (as it was originally enacted).

- (2) The amounts brought into account for the loss period for the purposes of this Part must be such as to secure that none of the loss referable to a time when the relationship was not so subject is treated for those purposes as arising in the loss period or any other accounting period of the company.
- (3) For the purposes of this section a loss is referable to a time when a relationship is not subject to United Kingdom taxation so far as, at the time to which the loss is referable, the company would not have been chargeable to corporation tax in the United Kingdom on any profits arising from the relationship.
- (4) If the company was not a party to the relationship at the time to which the loss is referable, subsection (3) applies as if the reference to the company were a reference to the person who at that time was in the same position as respects the relationship as is subsequently held by the company.
- (5) An amount which would be brought into account for the purposes of this Part in respect of any matter apart from this section is treated for the purposes of section 464(1) (amounts brought into account under this Part excluded from being otherwise brought into account) as if it were so brought into account.
- (6) Accordingly, that amount must not be brought into account for corporation tax purposes as respects that matter either under this Part or otherwise.
- (7) This section does not apply if fair value accounting is used.

Exchange gains and losses

328 Exchange gains and losses

- (1) The reference in section 307(3) to the profits and losses arising to a company from its loan relationships and related transactions includes a reference to exchange gains and losses so arising.
- (2) But subsection (1) is subject to subsections (3) and (4).
- (3) Subsection (1) does not apply to an exchange gain or loss of a company so far as—
 - (a) it arises—
 - (i) in relation to an asset or liability representing a loan relationship of the company, or
 - (ii) as a result of the translation from one currency to another of the profit or loss of part of the company's business, and
 - (b) it is recognised in the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.
- (4) Subsection (1) does not apply to so much of an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company as is within a description specified for the purpose in regulations made by the Treasury.
- (5) The Treasury may by regulations make provision for or in connection with bringing into account in specified circumstances amounts to which subsection (1) does not apply because of subsection (3) or (4).

Status: This is the original version (as it was originally enacted).

- (6) The reference in subsection (5) to bringing amounts into account is a reference to bringing amounts into account for the purposes of this Part as credits or debits arising to a company from its loan relationships.
- (7) The regulations may—
 - (a) make different provision for different cases, and
 - (b) make provision subject to an election or to other specified conditions.
- (8) For the meaning of references to exchange gains or losses from loan relationships, see section 475.

Pre-loan relationship, abortive and pre-trading expenses

329 Pre-loan relationship and abortive expenses

- (1) This section applies if—
 - (a) a company may enter into a loan relationship or related transaction but has not yet done so,
 - (b) it incurs any expenses for purposes connected—
 - (i) with entering into it, or
 - (ii) with giving effect to any obligation which might arise under it, and
 - (c) had the company entered into the relationship or transaction, the expenses would be expenses within section 307(3)(c).
- (2) The expenses are treated as expenses in relation to which debits may be brought into account in accordance with section 307(3) to the same extent as if the company had entered into the relationship or transaction.

330 Debits in respect of pre-trading expenditure

- (1) This section applies if—
 - (a) a non-trading debit is given for an accounting period of a company for the purposes of this Part, and
 - (b) within the period of 2 years beginning with the end of the period the company makes an election for the purposes of this section in respect of the debit.
- (2) The debit must not be brought into account for the purposes of this Part as a non-trading debit for that period.
- (3) Instead, if conditions A and B are met in respect of a trade, the debit—
 - (a) is treated for the purposes of this Part as if it were a debit for the accounting period in which the company begins to carry on the trade, and
 - (b) is to be brought into account in accordance with section 297(3) (trading debits).
- (4) Condition A is that the company begins to carry on the trade within the period of 7 years after the end of the accounting period for which a non-trading debit is given for the purposes of this Part.
- (5) Condition B is that that debit is such that, if it were given for the accounting period in which the company begins to carry on the trade, it would be brought into account by reference to that trade in accordance with section 297(3).

Company ceasing to be party to loan relationship

331 Company ceasing to be party to loan relationship

- (1) This section applies if—
 - (a) a company ceases to be a party to a loan relationship in an accounting period (“the cessation period”),
 - (b) profits or losses arise to the company from the loan relationship in that period, and
 - (c) the credits or debits brought into account for the purposes of this Part for that period do not include credits or debits representing the whole of those profits or losses.
- (2) Credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period must continue to be brought into account under this Part over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a loan relationship to which the company is a party in those periods.
- (3) Subsection (4) applies if any question arises how far in a post-cessation period—
 - (a) the company is a party to the loan relationship—
 - (i) for the purposes of a trade it carries on, or
 - (ii) for any other particular purpose or purposes, or
 - (b) the loan relationship is referable to a particular business the company carries on or a particular description of such business.
- (4) The question is to be determined by reference to the circumstances immediately before the company ceased to be a party to the loan relationship, instead of the circumstances in the post-cessation period.
- (5) Subsection (6) applies if any question arises—
 - (a) how far the loan relationship has a particular purpose in a post-cessation period, or
 - (b) whether there is a connection between the company and any other person for a post-cessation period for the purposes of this Part.
- (6) The question is to be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.

332 Repo, stock lending and other transactions

- (1) This section applies if—
 - (a) a company ceases to be a party to a loan relationship in any accounting period, for example as a result of the disposal of the rights or liabilities under the relationship under a repo or stock lending arrangement, but
 - (b) nonetheless, in accordance with generally accepted accounting practice, amounts in respect of the relationship are recognised in determining the profit or loss of the company for that or any subsequent accounting period.
- (2) Despite ceasing to be a party to the relationship, the company must bring amounts in respect of the relationship into account for those periods for the purposes of this Part.

Status: This is the original version (as it was originally enacted).

- (3) The amounts that must be so brought into account are those that are so recognised in respect of the relationship (but subject to the provisions of this Part, including, in particular, section 307(3)).
- (4) This section does not apply in relation to any amount in respect of a loan relationship which is brought into account for this Part as a result of—
 - (a) section 331 (company ceasing to be party to a loan relationship), or
 - (b) section 550 (ignoring effect on borrower of sale of securities: debtor repos, debtor quasi-repos and other arrangements).
- (5) Section 331(3) and (4) applies in relation to any time after the company ceases to be a party to a loan relationship in a case where this section applies as it applies where section 331 applies.

Company moving abroad

333 Company ceasing to be UK resident

- (1) If a company ceases to be UK resident, this Part applies as if—
 - (a) immediately before so ceasing the company had assigned the assets and liabilities which represent its loan relationships for consideration of an amount equal to their fair value at that time, and
 - (b) it had immediately reacquired them for consideration of the same amount.
- (2) Subsection (1) does not apply in relation to an asset or liability so far as immediately after the company ceases to be UK resident the asset is held or the liability is owed for the purposes of a permanent establishment of the company in the United Kingdom.
- (3) Subsection (1) does not apply if—
 - (a) the conditions in section 344(1)(a) to (c) are met in relation to the company (transferee leaving group after replacing transferor as party to loan relationship), and
 - (b) it ceases to be UK resident at the same time as it ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given in section 344(4).

334 Non-UK resident company ceasing to hold loan relationship for UK permanent establishment

- (1) This section applies if an asset or liability representing a loan relationship of a company which is not UK resident ceases to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction (but see subsection (3)).
- (2) This Part applies as if—
 - (a) immediately before the asset or liability so ceases the company had assigned it, so far as so ceasing, for consideration of an amount equal to its fair value at that time, and
 - (b) the company had immediately reacquired it for consideration of the same amount.

- (3) This section does not apply if—
- (a) the conditions in section 344(1)(a) to (c) are met in relation to the company (transferee leaving group after replacing transferor as party to loan relationship), and
 - (b) the asset or liability mentioned in subsection (1) ceases to be held or owed for the purposes of the permanent establishment at the same time as the company ceases to be a member of the relevant group.
- (4) In subsection (3) “the relevant group” has the meaning given in section 344(4).

CHAPTER 4

CONTINUITY OF TREATMENT ON TRANSFERS WITHIN GROUPS OR ON REORGANISATIONS

Application of this Chapter

335 Introduction to Chapter

- (1) This Chapter applies in the cases mentioned in—
- (a) section 336 (transfers of loans on group transactions),
 - (b) section 337 (transfers of loans on insurance business transfers), and
 - (c) section 339 (issues of new securities on certain cross-border reorganisations).
- (2) The following sections make provision about how the credits and debits to be brought into account under this Part in those cases are determined—
- (a) sections 340 and 341 (which apply in the cases mentioned in sections 336 and 337), and
 - (b) sections 342 and 343 (which apply in the case mentioned in section 339).
- (3) Sections 344 to 346 provide for the treatment of a loan relationship in respect of which section 336 has applied where the company replacing another as a party to a loan relationship later leaves the group of companies of which they were members.
- (4) Section 347 (disapplication of Chapter where transferor party to avoidance involving subsequent transfer by transferee) disapplies this Chapter in some circumstances in the cases mentioned in 336 and 337.
- (5) For the meaning of references in this Chapter to a company replacing another as a party to a loan relationship, see section 338.
- (6) In this Chapter references to a company being a member of a group of companies are to be read in accordance with section 170 of TCGA 1992 (interpretation of sections 171 to 181 of that Act: groups).

336 Transfers of loans on group transactions

- (1) The case referred to in section 335(1)(a) is where—
- (a) there is a transaction within subsection (2) or a series of transactions within subsection (3), and
 - (b) as a result one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.

- (2) A transaction is within this subsection if it is a related transaction between two companies which are—
- (a) members of the same group, and
 - (b) within the charge to corporation tax in respect of that transaction.
- (3) A series of transactions is within this subsection if it is a series having the same effect as a related transaction between two companies each of which—
- (a) has been a member of the same group at any time in the course of that series, and
 - (b) would be within the charge to corporation tax in respect of such a related transaction.
- (4) This Chapter does not apply as a result of this section in relation to—
- (a) a transfer of an asset, or
 - (b) a transfer of rights under, or an interest in, an asset,
- as a result of a transaction within subsection (2) or a series of transactions within subsection (3) if immediately before or after the transfer the asset is within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (assets held for certain categories of long-term business).
- (5) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

337 Transfers of loans on insurance business transfers

- (1) The case referred to in section 335(1)(b) is where—
- (a) a transfer between two companies occurs to which this section applies, and
 - (b) as a result one of the companies (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.
- (2) This section applies to the transfers specified in subsection (3), so far as they are not excluded by subsection (4).
- (3) They are—
- (a) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme, and
 - (b) any transfer between two companies which is a qualifying overseas transfer.
- (4) Subsection (3) does not apply to a transfer of an asset, or of rights under or an interest in an asset, if the asset—
- (a) was within one of the categories set out in section 440(4) of ICTA immediately before the transfer, and
 - (b) is not within that category immediately after it.
- (5) Subsection (6) applies for the purposes of subsection (4) if one of the companies mentioned in subsection (3) is an overseas life insurance company.
- (6) An asset is taken as being in the same category both immediately before and immediately after a transfer if the asset—
- (a) was in one category immediately before the transfer, and
 - (b) is within the corresponding category immediately after it.

- (7) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

338 Meaning of company replacing another as party to loan relationship

- (1) References in this Chapter to one company (“A”) replacing another company (“B”) as a party to a loan relationship include references to A becoming a party to a loan relationship which—
- (a) confers rights within subsection (2),
 - (b) imposes obligations within subsection (2), or
 - (c) both confers such rights and imposes such obligations.
- (2) Rights or obligations are within this subsection if they are equivalent to those of B under a loan relationship to which B has previously ceased to be a party.
- (3) For the purposes of subsection (2), A’s rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question—
- (a) the same rights against the same persons as to capital, interest and dividends, and
 - (b) the same remedies to enforce those rights.
- (4) For the purposes of subsection (3), any difference in—
- (a) the total nominal amounts of the assets representing each relationship,
 - (b) the form in which they are held, or
 - (c) the way in which they can be transferred,
- is ignored.
- (5) For the purposes of subsection (2), A’s obligations under a debtor relationship are equivalent to obligations under another debtor relationship if each set of obligations subjects the holder of the liability representing the relationship in question to—
- (a) the same obligations to the same persons as to capital, interest and dividends, and
 - (b) the same remedies to enforce those obligations.
- (6) For the purposes of subsection (5), any difference in—
- (a) the total nominal amounts of the assets representing the creditor relationship corresponding to each relationship,
 - (b) the form in which those assets are held, or
 - (c) the way in which they can be transferred,
- is ignored.

339 Issues of new securities on certain cross-border reorganisations

- (1) The case referred to in section 335(1)(c) is where each of conditions A to D is met.
- (2) Condition A is that sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
- (a) apply in relation to an exchange as a result of section 135(3) of that Act (which provides for sections 127 to 130 to apply to an exchange of securities for those in another company as if it were a reorganisation), or

- (b) would so apply but for section 116(5) of that Act (which disapplies sections 127 to 130 where the original shares or the new holding consist of or include a qualifying corporate bond).
- (3) Condition B is that the original shares consist of or include an asset representing a loan relationship.
- (4) Condition C is that company A is resident in one member State and company B is resident in another member State.
- (5) For the purposes of this section a company is resident in a member State if—
 - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (6) Condition D is that neither Chapter 13 (European cross-border transfers of business) nor Chapter 14 (European cross-border mergers) applies in relation to the exchange.
- (7) In this section—
 - (a) “company A” and “company B” have the same meaning as in section 135 of TCGA 1992,
 - (b) “original shares” has the same meaning as it has for the purposes of sections 126 to 131 of that Act, as applied by section 135 of that Act, and
 - (c) “receiving company” means the company to which the issue of shares in or debentures of company B mentioned in section 135(1) of that Act is made.
- (8) If company B is a company to which section 135(5) of TCGA 1992 applies (companies with no share capital), the reference in subsection (7)(c) to the shares in or debentures of company B includes a reference to any interests in the company possessed by its members.

Continuity of treatment: transfer of loan at notional carrying value

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

- (1) This section applies in the cases mentioned in—
 - (a) section 336 (transfers of loans on group transactions), and
 - (b) section 337 (transfers of loans on insurance business transfers).
- (2) The credits and debits to be brought into account for the purposes of this Part in respect of the loan relationship referred to in section 336(1)(b) or section 337(1)(b) are determined in accordance with subsections (3) to (5).
- (3) For the accounting period in which the transaction or, as the case may be, the first of the series of transactions takes place, the transferor is treated as having entered into that transaction for consideration of an amount equal to the notional carrying value of the asset or liability representing the relationship (see subsection (6)).
- (4) For any accounting period in which the transferee is a party to the relationship, it is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to its notional carrying value.

- (5) If a discount arises in respect of the transaction or series of transactions, the consideration is increased for the purposes of subsection (3) (but not subsection (4)) by the amount of the discount.
- (6) For the purposes of this section—
 - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),
 - (b) section 480(5) (when discount arises) applies as it applies for the purposes of section 480, and
 - (c) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (7) Schedule 28AA to ICTA (provision not at arm’s length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this section.
- (8) This section is subject to sections 332 and 341.

341 Transferor using fair value accounting

- (1) This section applies instead of section 340 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (5)).
- (2) The amount which is to be brought into account by the transferor in respect of the transaction or the series of transactions referred to in section 340(3) (“the transferor’s amount”) is—
 - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
 - (b) if a liability is to be brought into account, its fair value as at that date.
- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor’s amount.
- (4) If a discount arises in respect of the transaction or series of transactions, the transferor’s amount is increased for the purposes of subsection (2) (but not subsection (3)) by the amount of the discount.
- (5) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.
- (6) It does not matter for the purposes of subsection (5) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.
- (7) For the purposes of this section, section 480(5) (when discount arises) applies as it applies for the purposes of section 480.

(8) This section is subject to section 332.

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

- (1) This section applies in the case mentioned in section 339.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the exchange were a disposal of the asset representing the loan relationship referred to in section 339(3) for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount that would have been its carrying value in the accounts of the receiving company if a period of account had ended immediately before the date when the exchange occurred.
- (4) In this section—
 - “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
 - “receiving company” has the meaning given in section 339(7).
- (5) This section is subject to section 343.

343 Receiving company using fair value accounting

- (1) This section applies instead of section 342 if, in a case where that section would otherwise apply, the receiving company is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the receiving company in respect of the exchange (“the disposal amount”) is the fair value of the asset representing the loan relationship as at the date when the exchange occurred, or of the rights under or interest in that relationship as at that date.
- (3) For any accounting period in which company B is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, company B is treated as if it had acquired the asset representing the relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (5) and (6) of section 341 apply for the purposes of this section as they apply for the purpose of that section, taking references in that section to the transferor as references to the receiving company.
- (5) In this section “company B”, “original shares” and “receiving company” have the meaning given in section 339(7).

Transferee leaving group after replacing transferor as party to loan relationship

344 Introduction

- (1) Sections 345 and 346 apply if—

- (a) this Chapter applies in the case mentioned in section 336 (transfers of loans on group transactions),
 - (b) section 341 (transferor using fair value accounting) does not apply, and
 - (c) before the end of the relevant 6 year period and while still a party to the relevant loan relationship, the transferee ceases to be a member of the relevant group.
- (2) But the transferee is not treated for the purposes of this section and sections 345 and 346 as having left the relevant group if—
- (a) an asset or liability which represents a loan relationship is transferred in the course of a transfer or merger in relation to which Chapter 13 (European cross-border transfers of business) or Chapter 14 (European cross-border mergers) applies, and
 - (b) the transferee ceases to be a member of the relevant group in consequence of the transfer or merger.
- (3) In a case where subsection (2) applies, if the transferee becomes a member of another group in consequence of the transfer or merger, it is treated for the purposes of this section and sections 345 and 346 as if the relevant group and the other group were the same.
- (4) In this section and sections 345 and 346—
- “the relevant 6 year period” means the period of 6 years following—
 - (a) in a case where section 340 applies because of a transaction within section 336(2) (“case A”), that transaction, or
 - (b) in a case where section 340 applies because of a series of transactions within section 336(3) (“case B”), the last transaction of that series,
- “the relevant group” means—
- (a) in case A, the group mentioned in section 336(2), and
 - (b) in case B, the group mentioned in section 336(3), and
- “the relevant loan relationship” means the loan relationship mentioned in section 336(1)(b).

345 Transferee leaving group otherwise than because of exempt distribution

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group, and
 - (b) it does not so cease just because of a distribution which is exempt as a result of—
 - (i) section 213(2) of ICTA (exempt distributions), or
 - (ii) section 213A of ICTA (exempt distributions: division of business).
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned the asset or liability representing the relevant loan relationship immediately before ceasing to be a member of the relevant group,
 - (b) the assignment had been for consideration of an amount equal to the fair value of the asset or liability at that time, and
 - (c) the transferee had immediately reacquired the asset or liability for consideration of the same amount.

- (3) Condition A is that if this Part applied as mentioned in subsection (2) because of that subsection applying, a credit would be brought into account for the purposes of this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the relevant loan relationship is a creditor relationship,
 - (b) the transferee has a hedging relationship between a derivative contract and the creditor relationship, and
 - (c) because of section 631(2)(a) and (b) (transferee leaving group otherwise than because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 7 (derivative contracts) in respect of the derivative contract.
- (5) Section 707 (meaning of “hedging relationship”) applies for the purposes of this section.

346 Transferee leaving group because of exempt distribution

- (1) This section applies if—
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt as a result of—
 - (i) section 213(2) of ICTA (exempt distributions), or
 - (ii) section 213A of that Act (exempt distributions: division of business),and
 - (b) there is a chargeable payment within the meaning of section 214(2) of that Act (chargeable payments connected with exempt distributions) within 5 years after the making of that distribution.
- (2) If condition A or B is met, this Part applies as if—
- (a) the transferee had assigned the asset or liability representing the relevant loan relationship immediately before the chargeable payment was made,
 - (b) the assignment had been for consideration of an amount equal to the fair value of the asset or liability immediately before the transferee ceased to be a member of the relevant group, and
 - (c) the transferee had immediately reacquired the asset or liability for consideration of the same amount.
- (3) Condition A is that if subsection (2) applied a credit would be brought into account for the purposes of this Part by the transferee because of subsection (2)(a) and (b).
- (4) Condition B is that—
- (a) the relevant loan relationship is a creditor relationship,
 - (b) the transferee has a hedging relationship between a derivative contract and the creditor relationship, and
 - (c) because of section 632(2)(a) and (b) (transferee leaving group because of exempt distribution) a credit is to be brought into account by the transferee for the purposes of Part 7 (derivative contracts) in respect of the derivative contract.
- (5) Section 707 (meaning of “hedging relationship”) applies for the purposes of this section.

Disapplication of Chapter where transferor party to avoidance

347 Disapplication of Chapter where transferor party to avoidance

- (1) This Chapter does not apply in the cases mentioned in—
 - (a) section 336 (transfers of loans on group transactions), and
 - (b) section 337 (transfers of loans on insurance business transfers),if conditions A and B are met.
- (2) Condition A is that the transferor is a party to arrangements in accordance with which there is likely to be a transfer of rights or liabilities under the loan relationship by the transferee to another person in circumstances in which section 336 or 337 would not apply.
- (3) Condition B is that the purpose or one of the main purposes of the arrangements is to secure a tax advantage for the transferor or a person connected with it.
- (4) This Chapter does not apply in relation to a disposal in the cases mentioned in subsection (1) if section 455 (disposals for consideration not fully recognised by accounting practice) applies in relation to the disposal.
- (5) In this section—
 - “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions, and
 - “transfer” includes any arrangement which equates in substance to a transfer (including any acquisition or disposal of, or increase or decrease in, a share of the profits or assets of a partnership).

CHAPTER 5

CONNECTED COMPANIES RELATIONSHIPS: INTRODUCTION AND GENERAL

348 Introduction: meaning of “connected companies relationship”

- (1) This Chapter contains some general rules relating to connected companies relationships.
- (2) For the purposes of this Part a debtor relationship of a company is a connected companies relationship if there is a connection between—
 - (a) the company, and
 - (b) another company standing in the position of a creditor as respects the debt in question.
- (3) For the purposes of subsection (2) a company is treated as standing in the position of a creditor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (4) For the purposes of this Part a creditor relationship of a company is a connected companies relationship if there is a connection between—
 - (a) the company, and
 - (b) another company standing in the position of a debtor as respects the debt in question.

- (5) For the purposes of subsection (4) a company is treated as standing in the position of a debtor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (6) For the purposes of this Part, if a loan relationship is a connected companies relationship at any time in an accounting period, it is treated as being such a relationship for the period.
- (7) In this section “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

349 Application of amortised cost basis to connected companies relationships

- (1) This section applies if a loan relationship is a connected companies relationship for an accounting period.
- (2) The credits and debits which are to be brought into account for the purposes of this Part in respect of the relationship for the period are determined on an amortised cost basis of accounting.
- (3) Subsection (2) does not apply if section 454(4) (which requires fair value accounting to be applied to reset bonds etc) applies.
- (4) See also section 534(8) (which disapplies this section where the requirement to apply fair value accounting under section 534(1) applies).

350 Companies beginning to be connected

- (1) This section applies if—
 - (a) a company’s loan relationship becomes a connected companies relationship, and
 - (b) as a result of the application of section 349 the company—
 - (i) brings into account credits or debits determined in accordance with fair value accounting for one accounting period (“the earlier period”), and
 - (ii) brings into account credits or debits determined in accordance with an amortised cost basis of accounting for the next accounting period (“the later period”).
- (2) If—
 - (a) the fair value of a relevant asset at the end of the earlier period (“FVA”), exceeds
 - (b) the cost of the asset which would be given at that time on an amortised cost basis of accounting (“ACA”),
 the excess must be brought into account for the later period as a debit for the purposes of this Part.
- (3) If ACA exceeds FVA, the excess must be brought into account for the later period as a credit for the purposes of this Part.
- (4) If—

Status: This is the original version (as it was originally enacted).

- (a) the fair value of a relevant liability at the end of the earlier period (“FVL”), exceeds
- (b) the cost of the liability which would be given at that time on an amortised cost basis of accounting (“ACL”),

the excess must to be brought into account for the later period as a credit for the purposes of this Part.

- (5) If ACL exceeds FVL, the excess must to be brought into account for the later period as a debit for the purposes of this Part.

351 Companies ceasing to be connected

- (1) This section applies if—

- (a) a company’s loan relationship ceases to be a connected companies relationship, and
- (b) as a result of section 349 ceasing to apply the company—
 - (i) brings into account credits or debits determined in accordance with an amortised cost basis of accounting for one accounting period (“the earlier period”), and
 - (ii) brings into account credits or debits determined in accordance with a fair value basis of accounting for the next accounting period (“the later period”).

- (2) If—

- (a) the fair value of a relevant asset at the end of the earlier period (“FVA”), exceeds
- (b) the cost of the asset which would be given at that time on an amortised cost basis of accounting (“ACA”),

the excess must be brought into account for the later period as a credit for the purposes of this Part.

- (3) If ACA exceeds FVA, the excess must be brought into account for the later period as a debit for the purposes of this Part.

- (4) If—

- (a) the fair value of a relevant liability at the end of the earlier period (“FVL”), exceeds
- (b) the cost of the liability which would be given at that time on an amortised cost basis of accounting (“ACL”),

the excess must be brought into account for the later period as a debit for the purposes of this Part.

- (5) If ACL exceeds FVL, the excess must be brought into account for the later period as a credit for the purposes of this Part.

352 Disregard of related transactions

- (1) This section applies in an accounting period if—

- (a) section 349 applies in respect of a creditor relationship of a company for the period, and
- (b) a related transaction takes place in relation to the relationship in the period.

- (2) The credits brought into account in respect of the relationship for the period for the purposes of this Part must not be less than they would have been if—
 - (a) the transaction had not taken place, and
 - (b) no amounts had accrued after the transaction took place.
- (3) The debits brought into account in respect of the loan relationship for the period for the purposes of this Part must not be more than they would have been in that case.
- (4) Nothing in this section affects the credits or debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

CHAPTER 6

CONNECTED COMPANIES RELATIONSHIPS: IMPAIRMENT LOSSES AND RELEASES OF DEBTS

Introduction

353 Introduction to Chapter

- (1) This Chapter contains rules about impairment losses and releases of debts in the case of companies connected with other companies.
- (2) In particular, see—
 - (a) sections 354 to 357 (which prevent debits in respect of impairment losses and release debits from being brought into account in the case of connected companies relationships, subject to some exceptions),
 - (b) sections 358 to 360 (which exclude credits in respect of the release of debts or the reversal of impairments from being brought into account in that case, except where the release is a deemed release under section 361 or 362), and
 - (c) sections 361 to 363 (which treat debt releases as occurring when impaired debts become held by companies which might otherwise benefit from the exclusion under section 358).
- (3) In this Chapter “release debit” means a debit in respect of a release by a company of liability under a creditor relationship of the company.
- (4) Section 466 (companies connected for an accounting period) applies for the purposes of sections 354 to 360.
- (5) For the circumstances in which companies are connected for sections 361 and 362, see section 363.
- (6) For the meaning of “impairment loss” see section 476(1).

Exclusion of debits for impaired or released connected companies debts

354 Exclusion of debits for impaired or released connected companies debts

- (1) The general rule is that no impairment loss or release debit in respect of a company’s creditor relationship is to be brought into account for the purposes of this Part for

Status: This is the original version (as it was originally enacted).

an accounting period if section 349 (application of amortised cost basis to connected companies relationship) applies to the relationship for the period.

- (2) That rule is subject to—
 - (a) section 356 (swapping debt for equity), and
 - (b) section 357 (insolvent creditors).
- (3) Nothing in this section affects the debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

355 Cessation of connection

- (1) This section applies if, in the case of a creditor relationship of a company—
 - (a) an impairment loss or release debit is excluded by section 354 from being brought into account for any accounting period, and
 - (b) there is a later accounting period for which the creditor relationship in respect of the debt is not a connected companies relationship.
- (2) So far as any amount represents the impairment loss or release debit, no debit may be brought into account in respect of it—
 - (a) for the first accounting period within subsection (1)(b), or
 - (b) for any subsequent such accounting period.

356 Exception to section 354: swapping debt for equity

- (1) An impairment loss or release debit in relation to a liability to pay any amount to a company (“the creditor company”) under its creditor relationship is not prevented from being brought into account by section 354 if conditions A, B and C are met.
- (2) Condition A is that the creditor company treats the liability as discharged.
- (3) Condition B is that it does so in consideration of—
 - (a) any shares forming part of the ordinary share capital of the company on which the liability would otherwise have fallen, or
 - (b) any entitlement to such shares.
- (4) Condition C is that there would be no connection between the two companies for the accounting period in which the consideration is given if the question whether there is such a connection were determined by reference only to times before the creditor company—
 - (a) acquired possession of the shares, or
 - (b) acquired any entitlement to them.

357 Exception to section 354: insolvent creditors

- (1) An impairment loss or release debit is not prevented from being brought into account by section 354 in relation to an amount accruing to a company (“the creditor”) if—
 - (a) condition A, B, C, D or E is met in relation to the creditor, and
 - (b) the amount accrues to the creditor at a time which is the relevant time for the condition in question.
- (2) Condition A is that the creditor is in insolvent liquidation, and for this condition the relevant time is any time in the course of the winding up.

- (3) Condition B is that the creditor is in insolvent administration, and for this condition the relevant time is any time in the course of the administration.
- (4) Condition C is that the creditor is in insolvent administrative receivership, and for this condition the relevant time is any time when the appointment of the administrative receiver is in force.
- (5) Condition D is that an appointment of a provisional liquidator is in force in relation to the creditor under section 135 of the Insolvency Act 1986 (c. 45) or Article 115 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and for this condition the relevant time is any time when the appointment is in force.
- (6) Condition E is that under the law of a country or territory outside the United Kingdom, circumstances exist corresponding to those described in condition A, B, C or D, and for this condition the relevant time is any time corresponding to that described in the case of the condition in question.
- (7) Section 323 applies for interpreting this section as it applies for interpreting section 322(6).

Exclusion of credits for connected companies debts on release or reversal of impairments

358 Exclusion of credits on release of connected companies debts: general

- (1) This section applies if—
 - (a) a liability to pay an amount under a company’s debtor relationship is released,
 - (b) the release takes place in an accounting period for which—
 - (i) an amortised cost basis of accounting is used in respect of the relationship, and
 - (ii) the relationship is a connected companies relationship.
- (2) The company is only required to bring a credit into account in respect of the release for the purposes of this Part if it is a deemed release.
- (3) In subsection (2) “deemed release” means a release which is deemed to occur because of—
 - (a) section 361 (acquisition of creditor rights by connected company at undervalue), or
 - (b) section 362 (parties becoming connected where creditor’s rights subject to impairment adjustment).

359 Exclusion of credits on release of connected companies debts during creditor’s insolvency

- (1) This section applies if—
 - (a) a liability to pay an amount under a company’s debtor relationship is released,
 - (b) the release takes place in an accounting period for which an amortised cost basis of accounting is used in respect of that relationship,
 - (c) condition A, B, C, D or E in section 357 is met in relation to the company releasing the amount,
 - (d) immediately before the time when the condition in question was first met the relationship was a connected companies relationship, and

- (e) immediately after that time it was not such a relationship.
- (2) The company is not required to bring into account a credit in respect of the release for the purposes of this Part.

360 Exclusion of credits on reversal of impairments of connected companies debts

- (1) If an impairment loss is prevented from being brought into account by section 354, no credit in respect of any reversal of the impairment may be brought into account for the purposes of this Part.
- (2) Nothing in this section affects the credits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.

Deemed debt releases on impaired debts becoming held by connected company

361 Acquisition of creditor rights by connected company at undervalue

- (1) This section applies if—
 - (a) a company (“D”) is a party to a loan relationship as debtor,
 - (b) another company (“C”) becomes a party to it as creditor,
 - (c) immediately after it does so C and D are connected,
 - (d) in a case where the person from whom C acquires its rights under the loan relationship is a company, in the period of account in which C acquires them there is no connection between C and that company,
 - (e) the amount or value of any consideration given by C for the acquisition is less than the pre-acquisition carrying value (see subsection (5)), and
 - (f) at least one of the conditions in subsection (2) is met.
- (2) The conditions are that—
 - (a) the acquisition is not an arm’s length transaction, and
 - (b) there was a connection between C and D at any time in the period of 3 years beginning 4 years before the date of the acquisition.
- (3) C is treated as releasing its rights under the loan relationship when it acquires them.
- (4) The amount treated as released is the amount of the difference referred to in subsection (1)(e).
- (5) In subsection (1)(e) “the pre-acquisition carrying value” means the amount which would be the carrying value of the liability under the loan relationship in D’s accounts if a period of account had ended immediately before C became a party to it.
- (6) For the purposes of subsection (5) the carrying value is determined taking no account of—
 - (a) accrued amounts, or
 - (b) amounts paid or received in advance.

362 Parties becoming connected where creditor’s rights subject to impairment adjustment

- (1) This section applies if—

Status: This is the original version (as it was originally enacted).

- (a) a company (“D”) is a party to a loan relationship as debtor,
 - (b) another company (“C”) which—
 - (i) is a party to the loan relationship as creditor, and
 - (ii) is not connected with D,
 becomes connected with D, and
 - (c) the pre-connection carrying value would have been adjusted for impairment if a period of account had ended immediately before the companies became connected.
- (2) C is treated as releasing its rights under the loan relationship when C and D become connected.
- (3) The amount treated as released is the amount of the impairment adjustment referred to in subsection (1)(c).
- (4) In subsection (1)(c) “the pre-connection carrying value” means the amount that would be the carrying value of the asset representing the loan relationship in C’s accounts if a period of account had ended immediately before the companies became connected.
- (5) For the purposes of subsection (4) the carrying value is determined taking no account of—
- (a) accrued amounts,
 - (b) amounts paid or received in advance, or
 - (c) impairment losses.

363 Companies connected for sections 361 and 362

- (1) For the purposes of sections 361 and 362 there is a connection between two companies at any time if condition A or B is met at that time.
- (2) Condition A is that one company has control of the other.
- (3) Condition B is that both companies are under the control of the same person (but see subsection (6)).
- (4) For the purposes of sections 361 and 362 there is a connection between two companies in a period of account if there is a connection between them (within subsection (1)) at any time in the period.
- (5) Section 472 (meaning of “control”) applies for the purposes of this section.
- (6) Condition B is not taken to be met just because two companies have been under the control of—
 - (a) the Crown,
 - (b) a Minister of the Crown,
 - (c) a government department,
 - (d) a Northern Ireland department,
 - (e) a foreign sovereign power, or
 - (f) an international organisation.
- (7) Section 468 (connection between companies to be ignored in some circumstances) applies for the purposes of this section as it applies for the purposes of the provisions

which apply section 466, taking references in sections 468 and 469 to the accounting period as references to the period of account.

- (8) For the meaning of “international organisation”, see section 476(2) and (3).

CHAPTER 7

GROUP RELIEF CLAIMS INVOLVING IMPAIRED OR RELEASED CONSORTIUM DEBTS

364 Introduction to Chapter

- (1) This Chapter applies if—
- (a) there is (or was) a relevant consortium creditor relationship (see subsection (2)), and
 - (b) either—
 - (i) an impairment loss is or has been brought into account for the purposes of this Part for any group accounting period by the creditor, or
 - (ii) a debit in respect of a release of liability under the relationship is or has been so brought into account.
- (2) For the purposes of this Chapter a relationship is a relevant consortium creditor relationship if—
- (a) it is a creditor relationship of—
 - (i) a company (the “member company”), which is a member of a consortium by which a consortium company is owned, or
 - (ii) a company (a “group member”) which is a member of the same group of companies as the member company but is not itself a member of the consortium, and
 - (b) the consortium company or, if that company is a holding company, a consortium company which is a subsidiary of that company is (or was) the debtor (the “debtor consortium company”).
- (3) The provisions of this Chapter—
- (a) reduce debits for impairment losses and release debits under relevant consortium creditor relationships where an amount surrendered as group relief by the consortium company is claimed by a member company or group member (see section 365),
 - (b) provide for a corresponding reduction in credits in respect of such relationships where a reduction within paragraph (a) has occurred (see section 367),
 - (c) reduce claims for group relief where debits within paragraph (a) for earlier group accounting periods exceed reductions within paragraph (b) (see section 368), and
 - (d) provide for such claims to be carried forward where they exceed such debits (see section 369).
- (4) In this Chapter “release debit” means a debit in respect of a release of liability under a relevant consortium creditor relationship.

- (5) If section 403C of ICTA (amount of relief in consortium cases) applies, effect must be given to that section before effect is given to this Chapter.
- (6) Expressions defined in this section have the same meaning in the other provisions of this Chapter, and sections 370 and 371 also apply for the interpretation of this Chapter.
- (7) For the meaning of “impairment loss” see section 476(1).

365 Reduction of impairment loss debits where group relief claimed

- (1) This section applies for any group accounting period for which there is a net consortium debit.
- (2) For the purposes of this Chapter there is a net consortium debit for a group accounting period if—
 - (a) the total of the impairment losses and release debits brought into account for that period in respect of relevant consortium creditor relationships by—
 - (i) the member company, and
 - (ii) every group member,
 exceeds
 - (b) the total credits so brought into account by them in connection with debts owed by the companies which are the debtor consortium companies in respect of those relationships.
- (3) The net consortium debit is equal to that excess.
- (4) If there is a claim for that group accounting period by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by the debtor consortium companies, the debits brought into account in respect of the impairment losses and the release debits mentioned in subsection (2)(a) are reduced.
- (5) The amount of reduction in the case of each of the debits referred to in subsection (4) (“the relevant debits”) is calculated as follows.

Step 1

Find the total amount which—

- (a) may be surrendered as group relief by the debtor consortium companies, and
- (b) is claimed as group relief for the group accounting period by the member company or any group member.

Step 2

If the amount found at Step 1 does not exceed the net consortium debit, apportion the amount found at Step 1 between the relevant debits in proportion to their respective amounts.

If the amount found at Step 1 exceeds the net consortium debit, apportion so much of the amount found at Step 1 as does not exceed it between the relevant debits in proportion to their respective amounts.

- (6) This section is subject to section 366.

366 Effect where credit for release brought into account on amortised cost basis

- (1) This section applies if—
 - (a) a company releases liability under a relevant consortium creditor relationship of the company (“the release amount”), and
 - (b) the debtor consortium company brings into account an amount in respect of the release for any accounting period in accordance with an amortised cost basis of accounting.
- (2) An amount equal to the release amount is treated for the purposes of this Chapter as not being a debit brought into account for that period in relation to the relevant consortium creditor relationship.

367 Reduction of credits exceeding impairment losses

- (1) This section applies if, apart from this section, for any group accounting period—
 - (a) the total of the impairment losses and release debits brought into account for that period in respect of relevant consortium creditor relationships by—
 - (i) the member company, and
 - (ii) every group member,is less than
 - (b) the total credits so brought into account by them in connection with debts owed by the companies which are the debtor consortium companies in respect of those relationships.
- (2) Those credits are reduced (but not below nil) in accordance with subsection (3).
- (3) The amount of reduction in the case of each credit is calculated as follows.

Step 1

Find the total amount by which the debits in respect of the relationships for previous group accounting periods have been reduced under section 365(4).

Step 2

Deduct the total amount by which credits have previously been reduced under this section from the amount found at Step 1.

Step 3

Apportion the amount found at Step 2 between the credits in proportion to their respective amounts.

368 Reduction of claims where there are earlier net consortium debits

- (1) This section applies if—
 - (a) for any group accounting period there is a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by debtor consortium companies, and
 - (b) the total amount of the net consortium debits for earlier group accounting periods in respect of the relevant consortium creditor relationships exceeds any reductions in respect of those debits falling to be made under section 365(4).
- (2) In this section that excess is referred to as “the unreduced debits amount”.
- (3) If—

Status: This is the original version (as it was originally enacted).

- (a) the claim is the only claim for that period, and
 - (b) it exceeds the unreduced debits amount,
- the claim is reduced by the unreduced debits amount.

(4) If—

- (a) the claim is not the only claim for that period, and
 - (b) the total of the claims exceeds the unreduced debits amount,
- the claim is reduced by the same proportion of the unreduced debits amount as the claim bears to that total.

(5) In any other case, the claim is reduced to nil.

369 Carry forward of claims where there are no net consortium debts

- (1) This section applies if for any group accounting period there is—
- (a) a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by debtor consortium companies (as reduced under section 368, if it applies), and
 - (b) no net consortium debit in respect of the relevant consortium creditor relationships.
- (2) The claim (as so reduced) is carried forward and treated for the purposes of section 365—
- (a) as increasing any such claim for group relief made by the claimant company for its next accounting period, or
 - (b) if apart from this subsection there would be no such claim, as being such a claim.

370 Group accounting periods

- (1) In this Chapter “group accounting period” means—
- (a) any accounting period of the member company beginning on or after 1 October 2002, or
 - (b) any accounting period of a group member which—
 - (i) begins on or after that date, and
 - (ii) corresponds to such an accounting period of the member company.
- (2) Any such accounting period of the member company and any such corresponding accounting periods of group members are treated for the purposes of this Chapter as being the same accounting period.
- (3) For the purposes of this Chapter an accounting period of a group member corresponds to an accounting period of the member company if condition A, B or C is met.
- (4) Condition A is that the periods coincide.
- (5) Condition B is that the accounting period of the member company includes more than half of the accounting period of the group member.
- (6) Condition C is that—
- (a) the accounting period of the member company includes part of the accounting period of the group member, and

- (b) the remainder of that period is not within any accounting period of the member company.

371 Interpretation

- (1) In this Chapter—

- “consortium company” means a company within section 402(3)(a), (b) or (c) of ICTA (surrender of relief between members of consortia),

- “debtor consortium company” has the same meaning as in section 364 (see section 364(2)),

- “group accounting period” is to be read in accordance with section 370,

- “group member” has the same meaning as in section 364 (see section 364(2)),

- “group relief” has the meaning given by section 402(1) of ICTA,

- “holding company” means a company within section 402(3)(c) of ICTA,

- “member”, in relation to a consortium, has the same meaning as in Chapter 4 of Part 10 of ICTA (group relief),

- “member company” has the same meaning as in section 364 (see section 364(2)),

- “net consortium debit” is to be read in accordance with section 365(2) and (3),

- “relevant consortium creditor relationship” is to be read in accordance with section 364(2), and

- “subsidiary”, in relation to a company which is a holding company, means a company which is within section 402(3)(b) of ICTA by reference to that holding company.

- (2) Any reference in this Chapter to a company being owned by a consortium is to be read in accordance with section 413(6) of ICTA.

- (3) Any reference in this Chapter to two companies being members of the same group of companies is a reference to those companies being members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3)(a) of that Act).

CHAPTER 8

CONNECTED PARTIES RELATIONSHIPS: LATE INTEREST

372 Introduction to Chapter

- (1) This Chapter makes provision about the debits to be brought into account for the purposes of this Part in cases where certain conditions relating to interest that is not paid or is paid late are met and there is a connection between the parties to the loan relationship.
- (2) For those conditions and the rule that applies in those cases, see section 373 (late interest treated as not accruing until paid in some cases).
- (3) For the kinds of connections where the rule applies, see—

Status: This is the original version (as it was originally enacted).

- (a) section 374 (connection between debtor and person standing in position of creditor),
 - (b) section 375 (loans to close companies by participators etc),
 - (c) section 377 (party to loan relationship having major interest in other party), and
 - (d) section 378 (loans by trustees of occupational pension schemes).
- (4) For the meaning of “standing in the position of a creditor” in this Chapter, see section 379(1) (persons indirectly standing in the position of creditor).

373 Late interest treated as not accruing until paid in some cases

- (1) Debits relating to interest payable under a company’s debtor relationship are to be brought into account for the purposes of this Part on the assumption that the interest does not accrue until it is paid if—
- (a) conditions A and B are met, and
 - (b) the case is within section 374, 375, 377 or 378.
- (2) Condition A is that the interest is not paid within the period of 12 months following the end of the accounting period in which it would be treated as accruing apart from subsection (1).
- (3) Condition B is that credits representing the full amount of the interest are not brought into account for the purposes of this Part in respect of the corresponding creditor relationship for any accounting period.
- (4) For the meaning of “corresponding creditor relationship” in cases where persons indirectly stand in the position of creditor, see section 379(2).
- (5) References in this Chapter to “the actual accrual period” are references to the accounting period in which the interest would be treated as accruing apart from subsection (1).

374 Connection between debtor and person standing in position of creditor

- (1) The case to which this section applies is where there is for the actual accrual period a connection between—
- (a) the company which has the debtor relationship, and
 - (b) a company standing in the position of creditor as respects the loan relationship.
- (2) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

375 Loans to close companies by participators etc

- (1) The case to which this section applies is where—
- (a) there is a time in the actual accrual period when the close company conditions are met, and
 - (b) neither the CIS-based close company conditions nor the CIS limited partnership conditions are met.
- (2) The close company conditions are that—
- (a) the company which has the debtor relationship (“D”) is a close company, and

Status: This is the original version (as it was originally enacted).

- (b) a person (“C”) standing in the position of creditor as respects the loan relationship is—
 - (i) a participator in D,
 - (ii) the associate of a person who is participator in D,
 - (iii) a company of which a participator in D has control,
 - (iv) a company in which a participator in D has a major interest,
 - (v) a person who controls a company which is a participator in D,
 - (vi) the associate of a person within sub-paragraph (v), or
 - (vii) a company controlled by a person within sub-paragraph (v).
- (3) The CIS-based close company conditions are that—
 - (a) D is a CIS-based close company at all times when the close company conditions are met,
 - (b) C is not resident in a non-qualifying territory at any such time, and
 - (c) D is a small or medium-sized enterprise for the actual accrual period.
- (4) The CIS limited partnership conditions are that—
 - (a) the debt is one which is owed to, or to persons acting for, a CIS limited partnership,
 - (b) no member of that partnership is resident in a non-qualifying territory at any time in the actual accrual period,
 - (c) D has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) is met, and
 - (d) D is a small or medium-sized enterprise for the actual accrual period.
- (5) Section 376 applies for the interpretation of this section.

376 Interpretation of section 375

- (1) For the purposes of section 375 and this section, section 414 of ICTA (meaning of “close company” in the Tax Acts) applies with the omission of section 414(1)(a) (exclusion of non-UK resident companies).
- (2) A person who is a participator in a company which controls another company is treated for the purposes of section 375 and this section as being a participator in that other company also.
- (3) Subject to that, in section 375 and this section “participator”, in relation to a company, means a person who is a participator in the company for the purposes of Part 11 of ICTA because of section 417 of that Act, but not a person who is a participator for those purposes just because of being a loan creditor of the company.
- (4) Section 472 (meaning of “control”) applies for the purposes of section 375 and this section.
- (5) In section 375—
 - “CIS-based close company” means a company which would not be a close company apart from the rights and powers of one or more partners in a CIS limited partnership being attributed to another of the partners under section 416(6) of ICTA because of section 417(3)(a) of that Act,
 - “CIS limited partnership” means a limited partnership—
 - (a) which is a collective investment scheme, or

Status: This is the original version (as it was originally enacted).

- (b) which would be a collective investment scheme if it were not a body corporate,
“non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA,
“resident” has the meaning given by paragraph 5B(6) of that Schedule, and
“small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.

377 Party to loan relationship having major interest in other party

The case to which this section applies is where—

- (a) a person (“C”) standing in the position of a creditor as respects the loan relationship is a company, and
- (b) there is a time in the actual accrual period when—
 - (i) the company which has the debtor relationship (“D”) has a major interest in C, or
 - (ii) C has a major interest in D.

378 Loans by trustees of occupational pension schemes

- (1) The case to which this section applies is where—
 - (a) the loan is one made by trustees of an occupational pension scheme, and
 - (b) condition A, B or C is met.
- (2) Condition A is that there is a time in the actual accrual period when the company which has the debtor relationship (“D”) is the employer of employees to whom the scheme relates.
- (3) Condition B is that there is a connection between D and such an employer for the actual accrual period.
- (4) Condition C is that a company is such an employer and there is a time in the actual accrual period when—
 - (a) D has a major interest in that company, or
 - (b) that company has a major interest in D.
- (5) In this section “occupational pension scheme” has the meaning given in section 150(5) of FA 2004.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

379 Persons indirectly standing in the position of creditor

- (1) For the purposes of this Chapter a person is treated as standing in the position of a creditor as respects a loan relationship if the person indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
- (2) If—
 - (a) a person (“C”) indirectly stands in the position of creditor as respects a loan relationship by reference to such a series of relationships or debts, and

Status: This is the original version (as it was originally enacted).

- (b) section 373 (late interest treated as not accruing until paid in some cases) applies in relation to the debtor relationship because of subsection (1), the reference in section 373(3) to the corresponding creditor relationship is a reference to C's creditor relationship.
- (3) In subsection (1) "relevant money debt" means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

CHAPTER 9

PARTNERSHIPS INVOLVING COMPANIES

380 Partnerships involving companies

- (1) This section applies if—
 - (a) a trade or business is carried on by a firm,
 - (b) any of the partners in the firm is a company (a "company partner"), and
 - (c) a money debt is owed by or to the firm.
- (2) In calculating the profits and losses of the trade or business for corporation tax purposes under section 1259 (calculation of firm's profits or losses), no credits or debits may be brought into account under this Part—
 - (a) in relation to the money debt, or
 - (b) in relation to any loan relationship that would fall to be treated for the purposes of the calculation as arising from the money debt.
- (3) Instead, each company partner must bring credits and debits into account under this Part in relation to the debt or relationship for each of its accounting periods in which the conditions in subsection (1) are met.
- (4) The following provisions of this Chapter contain special rules about the credits and debits to be brought into account under subsection (3)—
 - (a) section 381 (determinations of credits and debits by company partners: general),
 - (b) section 382 (company partners using fair value accounting),
 - (c) section 383 (lending between partners and the partnership),
 - (d) section 384 (treatment of exchange gains and losses), and
 - (e) section 385 (company partners' shares where firm owns deeply discounted securities).
- (5) In those provisions "company partner" has the same meaning as in this section.

381 Determinations of credits and debits by company partners: general

- (1) The credits and debits to be brought into account under section 380(3) are to be determined separately for each company partner as follows.
- (2) The money debt owed by or to the firm is treated as if—
 - (a) it were owed by or, as the case may be, to the company partner, and
 - (b) it were so owed for the purposes of the trade or business which the company partner carries on.

Status: This is the original version (as it was originally enacted).

- (3) If the money debt arises from a transaction for the lending of money—
 - (a) it continues to be treated as so arising, and
 - (b) accordingly the company partner is treated as having a loan relationship.
- (4) Anything done by or in relation to the firm in connection with the money debt is treated as done by or in relation to the company partner.
- (5) The credits and debits in the case of each company partner are the partner's appropriate share of the total credits and debits determined in accordance with subsections (2) to (4) (without any reduction for the fact that the debt is treated as owed by or to each company partner).
- (6) A company partner's "appropriate share" is the share that would be apportioned to it on the assumption in subsection (7).
- (7) The assumption is that the total credits and debits determined in accordance with subsections (2) to (4) are apportioned between the partners in the shares in which any profit or loss would be apportioned between them in accordance with the firm's profit-sharing arrangements.

382 Company partners using fair value accounting

- (1) This section applies if a company partner uses fair value accounting in relation to its interest in the firm.
- (2) The credits and debits to be brought into account by the company partner under section 380(3) are to be determined on the basis of fair value accounting.

383 Lending between partners and the partnership

- (1) This section applies if—
 - (a) the money debt owed by or to the firm arises from a transaction for the lending of money, and
 - (b) there is a time in an accounting period of a company partner ("the relevant accounting period") when conditions A, B and C are met.
- (2) Condition A is that—
 - (a) if the debt is owed by the firm, the company partner stands in the position of a creditor and accordingly has a creditor relationship, and
 - (b) if the debt is owed to the firm, the company partner stands in the position of a debtor and accordingly has a debtor relationship.
- (3) Condition B is that the company partner controls the firm either alone or taken together with one or more other company partners connected with the company partner (see subsection (7)).
- (4) Condition C is that the company partner or any other company partner is treated under section 381(3) as if—
 - (a) it had the debtor relationship which corresponds to the creditor relationship mentioned in subsection (2)(a), or
 - (b) it had the creditor relationship which corresponds to the debtor relationship mentioned in subsection (2)(b).

- (5) If this section applies, for the purposes of this Part for the relevant accounting period there is taken to be a connection between—
 - (a) the company partner, and
 - (b) each company partner that is within subsection (4) (including the company partner itself if it is within that subsection),as a result of one of them having control of the other at a time in the period for the purposes of section 466(2).
- (6) The provisions of this Part about connected companies relationships apply accordingly.
- (7) For the purposes of subsection (3), one company partner is connected with another at any time in an accounting period if at that or any other time in the accounting period—
 - (a) one controls the other, or
 - (b) both are under the control of the same person.
- (8) Section 472 (meaning of “control”) applies for the purposes of this section.

384 Treatment of exchange gains and losses

- (1) Whether credits and debits in respect of exchange gains and losses are to be brought into account by a company partner under this Chapter as a result of section 328(1), or that section is disappplied by section 328(3), depends on the firm’s accounts.
- (2) Section 328(3) applies only so far as exchange gains and losses are recognised in the firm’s statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.
- (3) Accordingly, a company partner must bring credits and debits into account under this Chapter in respect of exchange gains and losses which are not so recognised.
- (4) For the meaning of references in this section to exchange gains and losses, see section 475.

385 Company partners' shares where firm owns deeply discounted securities

- (1) This section applies if the firm holds a deeply discounted security.
- (2) Each partner is treated for the purposes of this Chapter as beneficially entitled to the share of the security specified in subsection (3).
- (3) That share is the share to which the partner would be entitled if—
 - (a) all the partners were companies, and
 - (b) the security were apportioned in the shares in which any profit or loss would be apportioned between them in accordance with the firm’s profit-sharing arrangements.
- (4) In this section “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 430 of that Act).

Status: This is the original version (as it was originally enacted).

CHAPTER 10

INSURANCE COMPANIES

Introduction

386 Overview of Chapter

- (1) This Chapter contains special rules about the treatment of the loan relationships of insurance companies.
- (2) In particular, it—
 - (a) provides for special rules to apply in relation to an insurance company’s non-trading deficits referable to BLAGAB instead of those in Chapter 16 (see sections 387 to 391),
 - (b) excludes some loan relationships of corporate members of Lloyd’s from this Part (see section 392), and
 - (c) provides for the determination of questions concerning how far certain matters are referable to any particular category of a company’s long-term business (see sections 393 and 394).
- (3) For further special rules affecting insurance companies, see—
 - (a) section 298(3) (under which activities carried on by a company in the course of mutual insurance business which is not life assurance business or of BLAGAB are treated as not constituting a trade or part of a trade),
 - (b) Chapter 4 (continuity of treatment on transfers within groups or on reorganisations), and, in particular, sections 335(1) and (2), 336(4) and 337,
 - (c) section 405 (certain non-UK residents with interest on 3½% War Loan 1952 Or After),
 - (d) sections 468 and 471 (connection between creditor and debtor companies to be ignored in some cases where creditor is insurance company carrying on BLAGAB),
 - (e) section 483(6) (treatment of deferred acquisition costs and provision for unearned premiums or for unexpired risks as a money debt for the purposes of Chapter 2 of Part 6 in the case of companies carrying on insurance business), and
 - (f) section 486(4) (no exchange gains or losses to arise for the purposes of that Chapter where relevant debts prevented from being deductible as expenses of insurance companies at Step 1 of section 76(7) of ICTA).
- (4) In this Chapter “BLAGAB” means basic life assurance and general annuity business.

Treatment of deficit on basic life assurance and general annuity business

387 Treatment of deficit on basic life assurance and general annuity business: introduction

- (1) Sections 388 to 391 apply instead of Chapter 16 (non-trading deficits) if a company has a non-trading deficit from its loan relationships for BLAGAB for any accounting period.

- (2) In those sections “the deficit” and “the deficit period” mean that deficit and that period respectively.

388 Basic rule: deficit set off against income and gains of deficit period

- (1) The basic rule is that the deficit must be set off against any income and gains of the deficit period which are referable to BLAGAB.
- (2) The income and gains are reduced accordingly.
- (3) Any such reduction is made before any expenses deduction under section 76 of ICTA (expenses of insurance companies).

389 Claim to carry back deficit

- (1) If the deficit exceeds the income and gains for the deficit period referred to in section 388(1), the company may make a claim for the whole or part of the excess (“the claim amount”)—
- (a) to be carried back for up to 3 accounting periods ending within the permitted period, and
 - (b) to be set off against the available profits of the company in those periods in accordance with subsection (2).
- (2) The claim amount reduces the company’s available profits in the most recent accounting period of the company, before any remainder reduces those in the next most recent accounting period and then those in the next most recent accounting period.
- (3) For the meaning of “available profits”, see section 390.
- (4) In this section and that section “permitted period” means the period of 12 months immediately before the deficit period.
- (5) A claim under this section must be made—
- (a) within the period of 2 years after the end of the deficit period, or
 - (b) within such further period as an officer of Revenue and Customs allows.

390 Meaning of “available profits”

- (1) For the purposes of section 389 the available profits of the company for an accounting period are its BLAGAB non-trading loan relationships profits for the period (see subsection (4)), less the unused part of the relevant deductions for the period (see subsection (5)).
- (2) If an accounting period ending within the permitted period begins before it, only a part of the amount which would otherwise be the available profit for that accounting period is available profit.
- (3) That part is so much as is proportionate to the part of the accounting period in the permitted period.
- (4) References in this section to a company’s BLAGAB non-trading loan relationships profits for an accounting period are references to the amount (if any) which is chargeable to tax for that period under section 299 (charge to tax on non-trading profits) for the company’s BLAGAB.

Status: This is the original version (as it was originally enacted).

- (5) The unused part of the relevant deductions for an accounting period is found as follows.

Step 1

Add together—

- (a) so much of the expenses deduction for the period given by Step 8 in section 76(7) of ICTA (expenses of insurance companies) as is referable to BLAGAB, and
- (b) so much of the sum of the deductions made in the case of the company in respect of charges on income for that period as is so referable.

Step 2

Add together—

- (a) the total amounts so referable which could be applied for the period in making deductions as a result of section 76 of ICTA if the company's BLAGAB non-trading loan relationships profits for the period were disregarded, and
- (b) the total amounts so referable which could be applied for the period in making deductions in respect of charges on income if those profits were disregarded.

Step 3

Subtract the amount found at Step 2 from the amount found at Step 1.

The result is the unused part of the relevant deductions for the accounting period.

- (6) In the case of any claim under section 389, the reference in Step 1(a) in subsection (5) to the expenses deduction for an accounting period given by Step 8 in section 76(7) of ICTA and the reference in Step 2(a) in subsection (5) to the deduction for expenses as a result of section 76 of ICTA for an accounting period are references to the deduction for expenses that would have been made as a result of that section for that period on the assumptions in subsections (7) and (8).
- (7) The first assumption is that no account is taken of—
- (a) that claim, or
 - (b) any other claim under section 389 relating to a deficit for an accounting period after the deficit period.
- (8) The second assumption is that all such adjustments are made as are required as a result of any sum having been carried back under the Corporation Tax Acts to the accounting period mentioned in subsection (5), otherwise than as a result of—
- (a) the claim mentioned in subsection (6), or
 - (b) any such other claim as is mentioned in subsection (7)(b).

391 Carry forward of surplus deficit to next accounting period

- (1) This rule applies if any of the deficit is not—
- (a) set off against the income and gains referred to in section 388(1), or
 - (b) set off against the profits referred to in section 389(1) as the result of a claim under that section.
- (2) That deficit must be carried forward to the accounting period immediately after the deficit period (“the next period”).

Status: This is the original version (as it was originally enacted).

- (3) Any deficit so carried forward is treated for the purposes of the Corporation Tax Acts (including sections 388 to 390) as expenses payable which—
 - (a) are referable to the next period, and
 - (b) are to be brought into account at Step 3 in section 76(7) of ICTA (expenses of insurance companies).

Exclusion of loan relationships of members of Lloyd's

392 Exclusion of loan relationships of members of Lloyd's

- (1) This section applies to any loan relationship of a corporate member of Lloyd's.
- (2) This Part does not apply as respects the relationship so far as rights or liabilities under it or securities representing it are—
 - (a) assets forming part of the member's premium trust fund, or
 - (b) liabilities attached to that fund.
- (3) In this section "corporate member" and "premium trust fund" have the same meaning as in Chapter 5 of Part 4 of FA 1994 (Lloyd's underwriters: corporations etc) (see section 230(1) of that Act).

Determination of questions requiring apportionments

393 General rules for some debtor relationships

- (1) This section applies if a debtor relationship of an insurance company is represented by a liability which is a liability of its long-term insurance fund.
- (2) Any question arising for the purposes of the Corporation Tax Acts as to how far any credits or debits given for the purposes of this Part in respect of the liability are referable to any particular category of the company's long-term business is determined as follows.
- (3) In the case of credits and debits within the rules in section 394, that section applies.
- (4) In the case of other credits and debits, the relevant fraction of the credits or debits is referable to a category of long-term business.
- (5) That fraction is determined by applying section 432A(6) to (6B) and (8) of ICTA (apportionment of income and gains) as if—
 - (a) the credits or debits were income not directly referable to any category of business, and
 - (b) the references in section 432A(6) to assets directly referable to a category of business were references to assets linked to that category.

394 Special rules for some debtor relationships

- (1) This section sets out the rules referred to in section 393(3) as to how far certain credits or debits given for the purposes of this Part in respect of liabilities representing a debtor relationship of an insurance company which are liabilities of its long-term insurance fund are referable to any particular category of its long-term business.

Status: This is the original version (as it was originally enacted).

- (2) If the liabilities are liabilities of an internal linked fund of the company relating to one category of long-term business, the credits or debits are referable to that category.
- (3) If the liabilities are liabilities of an internal linked fund of the company relating to two or more such categories, the credits or debits are referable to those categories in the same proportions as the linked assets in the fund are apportioned to them under section 432ZA(4) of ICTA (linked assets).
- (4) If—
- (a) the liabilities arise from deposit back arrangements, and
 - (b) the business reinsured by the arrangements under which the deposit back arrangements are made (“the reinsurance arrangements”) is within one category of long term business,
- the credits or debits are referable to that category.
- (5) If—
- (a) the liabilities arise from deposit back arrangements, and
 - (b) the business reinsured by the reinsurance arrangements is within two or more such categories,
- the credits or debits are referable to those categories in the same proportions as the relevant proportions of the liabilities reinsured by the arrangements which are liabilities relating to those categories.
- (6) For the purposes of subsection (5) “relevant proportion”, in relation to reinsured liabilities of any particular category of business, means the average of—
- (a) the proportion of all the reinsured liabilities that are liabilities relating to that category at the beginning of the period of account, and
 - (b) the proportion of all the reinsured liabilities that are liabilities relating to that category at the end of that period.
- (7) Debits relating to interest payable in respect of the late payment of any benefits are referable to the category of long-term business that comprises the effecting and carrying out of the policies or contracts under which the benefits are payable.

CHAPTER 11

OTHER SPECIAL KINDS OF COMPANY

Investment trusts' and venture capital trusts' creditor relationships

395 Investment trusts: profits or losses of a capital nature

- (1) Profits or losses of a capital nature arising to an investment trust from a creditor relationship may not be brought into account as credits or debits for the purposes of this Part.
- (2) For the purposes of this section “profits or losses of a capital nature” means profits or losses that—
- (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
 - (b) would have been so accounted for if that Statement had been applied correctly.

Status: This is the original version (as it was originally enacted).

- (3) “The Statement of Recommended Practice”, in relation to an accounting period for which it is required or permitted to be used, means—
 - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
 - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to an investment trust that prepares accounts in accordance with international accounting standards.
- (5) An order under subsection (4) may make—
 - (a) different provision for different cases, and
 - (b) incidental, supplemental, consequential and transitional provision and savings.

396 Venture capital trusts: profits or losses of a capital nature

- (1) Profits or losses of a capital nature arising to a venture capital trust from a creditor relationship may not be brought into account as credits or debits for the purposes of this Part.
- (2) For the purposes of this section “profits or losses of a capital nature” means profits or losses that—
 - (a) are accounted for through the capital column of the income statement in accordance with the Statement of Recommended Practice, or
 - (b) would have been so accounted for if the venture capital trust had been an investment trust and that Statement had been applied correctly.
- (3) In this section “the Statement of Recommended Practice” has the meaning given in section 395(3) (investment trusts: profits or losses of a capital nature).
- (4) The Treasury may by order amend the definition of “profits or losses of a capital nature” in subsection (2), so far as it applies in relation to a venture capital trust that prepares accounts in accordance with international accounting standards.
- (5) An order under subsection (4) may make—
 - (a) different provision for different cases, and
 - (b) incidental, supplemental, consequential and transitional provision and savings.

Credit unions

397 Credit unions

- (1) In calculating the income of a credit union for any accounting period, no credit is to be brought into account for the purposes of this Part in respect of a loan relationship of the union if a member of the union stands in the position of debtor in relation to the debt in question.
- (2) But subsection (1) does not apply if the credit union—

Status: This is the original version (as it was originally enacted).

- (a) is obliged to make a return under section 887(2) of ITA 2007 for the accounting period, and
 - (b) has not done so within—
 - (i) 3 months after the end of the period, or
 - (ii) such longer period as an officer of Revenue and Customs allows.
- (3) No debit is to be brought into account for the purposes of this Part in respect of a loan relationship of a credit union if a member of the union stands in the position of creditor in relation to the debt in question.

CHAPTER 12

SPECIAL RULES FOR PARTICULAR KINDS OF SECURITIES

Introduction

398 Overview of Chapter

- (1) This Chapter sets out rules relating to the holding of particular kinds of securities.
- (2) In particular, see—
 - (a) sections 399 to 405 (gilt-edged securities),
 - (b) sections 406 to 412 (deeply discounted securities: connected companies and close companies),
 - (c) sections 413 and 414 (funding bonds),
 - (d) sections 415 to 419 (derivatives), and
 - (e) section 420 (assumptions where options etc apply).
- (3) For other special rules about deeply discounted securities, see section 385 (company partners' shares where firm owns deeply discounted securities).

Gilt-edged securities

399 Index-linked gilt-edged securities: basic rules

- (1) This section applies if a loan relationship is represented by an index-linked gilt-edged security.
- (2) The amounts to be brought into account for the purposes of this Part are to be determined using fair value accounting.
- (3) But, in calculating those amounts, the adjustment specified in section 400 (adjustments for changes in index) must be made if that section applies.
- (4) In this section and section 400 “index-linked gilt-edged securities” means any gilt-edged securities under which the amounts of the payments are determined wholly or partly by reference to the retail prices index.
- (5) For the meaning of “gilt-edged securities”, see section 476(1).

400 Index-linked gilt-edged securities: adjustments for changes in index

- (1) This section applies if—
 - (a) the amounts to be brought into account for the purposes of this Part in respect of a gilt-edged security fall to be determined by reference to its value at two different times, and
 - (b) there is a change in the retail prices index between the earlier and the later time.
- (2) If that change is an increase, the carrying value of the security at the earlier time is increased by the same percentage as the percentage increase in the retail prices index between those times.
- (3) If that change is a reduction, the carrying value of the security at the earlier time is reduced by the same percentage as the percentage reduction in the retail prices index between those times.
- (4) The Treasury may, in relation to any description of index-linked gilt-edged securities, by order provide that—
 - (a) there are to be no adjustments under this section, or
 - (b) an adjustment specified in the order is to be made instead.
- (5) An order under subsection (4)—
 - (a) may not apply to a security issued before the making of the order, but
 - (b) may make different provision for different descriptions of securities.
- (6) The general rule is that the percentage increase or reduction in the retail prices index is determined for the purposes of this section by reference to the difference between—
 - (a) the index for the month in which the earlier time falls, and
 - (b) the index for the month in which the later time falls.
- (7) But if the earlier time falls at the beginning of an accounting period which begins with the first day of a month, the index for the previous month is used for the purposes of subsection (6)(a).

401 Gilt strips

- (1) This section applies if a loan relationship is represented by—
 - (a) a strip of a gilt-edged security, or
 - (b) any other gilt-edged security.
- (2) Subsections (3) and (4) apply if a person exchanges a gilt-edged security for strips of that security.
- (3) The security is treated as having been redeemed at the time of the exchange by the payment to that person of its market value.
- (4) The person is treated as having acquired each strip for an amount equal to—

$$A \times \frac{B}{C}$$

where—

- A is the market value of the security at the time of the exchange,
- B is the market value of the strip at that time, and

Status: This is the original version (as it was originally enacted).

C is the total of the market values at that time of all the strips received in the exchange.

- (5) Subsections (6) and (7) apply if strips of a gilt-edged security are consolidated into a single gilt-edged security by being exchanged by any person for that security.
- (6) Each strip is treated as having been redeemed at the time of the exchange by the payment to that person of the amount equal to its market value.
- (7) The person is treated as having acquired the security for the amount equal to the total of the market values of all the strips given in the exchange.
- (8) For the meaning of “market value” and “strip” in relation to securities, see section 402 and section 403 respectively.

402 Market value of securities

- (1) References in section 401 to the market value of a security given or received in exchange for another are references to its market value at the time of the exchange.
- (2) The Treasury may by regulations make provision for the purposes of section 401 and this section as to the way of determining the market value at any time of—
 - (a) any strip, or
 - (b) any other gilt-edged security.
- (3) The regulations may make—
 - (a) different provision for different cases, and
 - (b) incidental, supplemental, consequential and transitional provision and savings.

403 Meaning of “strip”

- (1) In sections 401 and 402 “strip”, in relation to a gilt-edged security, means a security issued under the National Loans Act 1968 (c. 13) which meets conditions A, B and C.
- (2) Condition A is that the security is issued for the purpose of representing the right to or of securing—
 - (a) a payment corresponding to a payment of interest or principal remaining to be made under the gilt-edged security, or
 - (b) two or more payments each corresponding to a payment to be so made.
- (3) Condition B is that the security is issued in conjunction with the issue of one or more other securities which, together with that security—
 - (a) represent the right to, or
 - (b) secure,
 payments corresponding to every payment remaining to be made under the gilt-edged security.
- (4) Condition C is that the security is not itself a security that—
 - (a) represents the right to, or
 - (b) secures,
 payments corresponding to a part of every payment remaining to be made under the gilt-edged security.

Status: This is the original version (as it was originally enacted).

- (5) After the balance has been struck for a dividend on a gilt-edged security, a payment to be made in respect of that dividend is treated for the purposes of conditions A, B and C as not being a payment remaining to be made under that security.

404 Restriction on deductions etc relating to FOTRA securities

- (1) A company which meets conditions A and B is not to bring into account for the purposes of this Part—
- (a) any amount relating to changes in the value of a FOTRA security, or
 - (b) any debit in respect of the loan relationship represented by the security, including any expenses related to holding the security or any transaction concerning it.
- (2) Condition A is that the company is the beneficial owner of the security.
- (3) Condition B is that the company is a company which would be exempt from corporation tax on the security under section 1279 (exemption of profits from FOTRA securities).
- (4) In this section “FOTRA security” has the same meaning as in that section (see section 1280(1)).

405 Certain non-UK residents with interest on 3½% War Loan 1952 Or After

- (1) This section applies if—
- (a) in any accounting period a non-UK resident company carries on a business in the United Kingdom—
 - (i) consisting of banking or insurance, or
 - (ii) consisting wholly or partly of dealing in securities, and
 - (b) in calculating the profits of the business for the period any amount is disregarded as a result of section 1279 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.
- (2) Interest on money borrowed for the purposes of the business is to be brought into account as a debit for the purposes of this Part for that period only so far as it exceeds the ineligible amount.
- (3) The ineligible amount is found as follows—
- Step 1*
Add together all sums borrowed for the purposes of the business and still owing in the accounting period.
 - Step 2*
Deduct any sums carrying interest that is not brought into account as a debit under this Part (otherwise than because of subsection (2)).
 - Step 3*
If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the business in the accounting period, deduct the excess from that amount.
 - Step 4*

Status: This is the original version (as it was originally enacted).

Calculate the average rate of interest in the accounting period on money borrowed for the purposes of the business.

Step 5

Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the accounting period.

The result is the ineligible amount.

- (4) If the company's holding of 3½% War Loan 1952 Or After has fluctuated during the accounting period, the total cost for the purposes of Step 3 is taken to be—

$$C \times \frac{AH}{TH}$$

where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the accounting period,

AH is the average holding in that period, and

TH is the total of the initial holding (if any) and any holdings acquired during the accounting period.

- (5) In subsection (4) “initial holding” means the holding held by the company at the beginning of the accounting period.

Deeply discounted securities: connected companies and close companies

406 Introduction

- (1) The following sections deal with deeply discounted securities—
- (a) sections 407 and 408 (deeply discounted securities where companies have a connection),
 - (b) sections 409 to 411 (deeply discounted securities of close companies), and
 - (c) section 412 (persons indirectly standing in the position of creditor).
- (2) In this section and sections 407 to 412 “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 430 of that Act).
- (3) In sections 407 to 412 “the discount” means the difference between—
- (a) the issue price of the security, and
 - (b) the amount payable on redemption.
- (4) The provisions of Chapter 8 of Part 4 of ITTOIA 2005 apply for the purposes of this section and sections 407 to 412 for determining the difference between the issue price of a security and the amount payable on redemption as they apply for the purposes of section 430 of that Act.

407 Postponement until redemption of debits for connected companies' deeply discounted securities

- (1) This section applies as respects any accounting period (“the relevant period”) if—
- (a) a debtor relationship of a company (“the issuing company”) is represented by a deeply discounted security issued by it,

Status: This is the original version (as it was originally enacted).

- (b) at any time in the relevant period another company stands in the position of a creditor as respects the security,
 - (c) there is a connection between those companies for the relevant period,
 - (d) the period is not the accounting period in which the security is redeemed, and
 - (e) credits representing the full amount of the discount which is referable to the relevant period are not brought into account for the purposes of this Part in respect of the corresponding creditor relationship for any accounting period (see section 412(2)).
- (2) The debits to be brought into account for the purposes of this Part in respect of the loan relationship by the issuing company are to be adjusted so that any debit relating to the amount of the discount which is referable to the relevant period—
- (a) is not brought into account for the relevant period, but
 - (b) is brought into account for the accounting period in which the security is redeemed.
- (3) The amount of the discount which is referable to the relevant period is the amount of it which would be brought into account for that period apart from this section.
- (4) For the meaning of “standing in the position of a creditor” and the meaning of “corresponding creditor relationship” where a company indirectly stands in that position, see section 412.
- (5) Whether there is a connection between companies for the purposes of this section is determined in accordance with section 408.

408 Companies connected for section 407

- (1) For the purposes of section 407 there is a connection between two companies for an accounting period if condition A or B is met.
- (2) Condition A is that there is a time in the period when one of the companies has control of, or a major interest in, the other.
- (3) Condition B is that there is a time in the period when both companies are under the control of the same person.
- (4) Section 472 (meaning of “control”) applies for the purposes of this section.
- (5) For the meaning of “major interest”, see section 473.

409 Postponement until redemption of debits for close companies' deeply discounted securities

- (1) This section applies for any accounting period (“the relevant period”) if—
- (a) a debtor relationship of a close company (“the issuing company”) is represented by a deeply discounted security it has issued,
 - (b) at any time in the period there is a person who stands in the position of a creditor as respects the security and is—
 - (i) a participator in the issuing company,
 - (ii) an associate of such a participator,
 - (iii) a company of which such a participator has control,
 - (iv) a person who controls a company which is such a participator,

Status: This is the original version (as it was originally enacted).

- (v) an associate of a person within sub-paragraph (iv), or
 - (vi) a company controlled by a person within sub-paragraph (iv),
 - (c) the period is not the accounting period in which the security is redeemed, and
 - (d) this section is not disapplied by section 410.
- (2) The debits which are to be brought into account for the purposes of this Part by the issuing company in respect of the loan relationship are to be adjusted so that debits relating to the amount of the discount that is referable to the relevant period (“relevant debits”)—
- (a) are not brought into account for the relevant period, but
 - (b) are brought into account for the accounting period in which the security is redeemed.
- (3) If there is a person within subsection (1)(b) for only part of the relevant period, subsection (2) applies only to the appropriate proportion of the relevant debits.
- (4) In subsection (3) “the appropriate proportion” means the proportion that the part of the relevant period for which there is such a person bears to the whole of that period.
- (5) The amount of the discount that is referable to the relevant period is the amount of it which would be brought into account for the purposes of this Part for the relevant period in the case of the issuing company, apart from subsections (2) and (3).
- (6) For the meaning of other expressions used in this section, see—
- (a) section 411 (interpretation of this section), and
 - (b) section 412 (persons indirectly standing in the position of creditor).

410 Exceptions to section 409

- (1) Section 409 does not apply for any accounting period (“the relevant period”) if any of the following conditions are met—
- (a) the corresponding creditor relationship conditions (see subsection (2)),
 - (b) the CIS-based close company conditions (see subsection (3)), or
 - (c) the CIS limited partnership conditions (see subsection (4)).
- (2) The corresponding creditor relationship conditions are that—
- (a) at all times in the relevant period when there is a person within section 409(1) (b), that person is a company, and
 - (b) credits representing the full amount of the discount that is referable to the period are brought into account for the purposes of this Part for any accounting period in respect of the corresponding creditor relationship (see section 412(3)).
- (3) The CIS-based close company conditions are that—
- (a) the issuing company is a CIS-based close company,
 - (b) at no time in the relevant period when there is a person within section 409(1) (b) is that person resident in a non-qualifying territory, and
 - (c) the issuing company is a small or medium-sized enterprise for the relevant period.
- (4) The CIS limited partnership conditions are that—

Status: This is the original version (as it was originally enacted).

- (a) the debt is one which is owed to, or to persons acting for, a CIS limited partnership,
 - (b) no member of that partnership is resident in a non-qualifying territory at any time in the relevant period when there is a person within section 409(1)(b),
 - (c) the issuing company has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) is met, and
 - (d) the issuing company is a small or medium-sized enterprise for the relevant period.
- (5) In this section—
- “CIS-based close company” means a company that would not be a close company apart from the rights and powers of one or more partners in a CIS limited partnership being attributed to another of the partners under section 416(6) of ICTA because of section 417(3)(a) of that Act,
 - “CIS limited partnership” means a limited partnership—
 - (a) which is a collective investment scheme, or
 - (b) which would be a collective investment scheme if it were not a body corporate,
 - “issuing company” has the same meaning as in section 409 (see subsection (1)(a) of that section),
 - “non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to ICTA (provision not at arm’s length),
 - “resident” has the meaning given by paragraph 5B(6) of that Schedule, and
 - “small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.
- (6) For the meaning of “corresponding creditor relationship”, see section 412 (persons indirectly standing in the position of creditor).

411 Interpretation of section 409

- (1) Section 472 (meaning of “control”) applies for the purposes of section 409 and this section.
- (2) A person who is a participator in a company which controls another company is treated for the purposes of section 409 as being a participator in that other company also.
- (3) Subject to that, in section 409 and this section “participator”, in relation to a company, means a person who is a participator in the company for the purposes of Part 11 of ICTA because of section 417 of that Act, but not a person who is a participator for those purposes just because of being a loan creditor of the company.
- (4) In determining whether a person who carries on the trade of banking is a participator in a company for the purposes of section 409 and this section, securities of the company acquired by the person in the ordinary course of the person’s business are ignored.

412 Persons indirectly standing in the position of creditor

- (1) For the purposes of sections 407(1)(b) and 409 a person is treated as standing in the position of a creditor if the person indirectly stands in that position by reference to a series of loan relationships or relevant money debts.

Status: This is the original version (as it was originally enacted).

- (2) If a company (“C”) is so treated for the purposes of section 407(1)(b), the reference in section 407(1)(e) to the corresponding creditor relationship is a reference to C’s creditor relationship.
- (3) If a person (“P”) is so treated for the purposes of section 409, the reference in section 410(2)(b) to the corresponding creditor relationship is a reference to P’s creditor relationship.
- (4) In subsection (1) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

Funding bonds

413 Issue of funding bonds

- (1) This section applies to the issue of funding bonds to a creditor in respect of a liability to pay interest on a debt incurred by a body corporate, a government, a public institution or other public authority.
- (2) The issue is treated for the purposes of the Corporation Tax Acts as if it were the payment of so much of that interest as equals the market value of the bonds at their issue.
- (3) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

414 Redemption of funding bonds

- (1) The redemption of funding bonds is not treated as the payment of interest on a debt for the purposes of the Corporation Tax Acts if their issue was treated as the payment of interest on the debt under—
 - (a) section 413, or
 - (b) section 380 of ITTOIA 2005 (which makes provision corresponding to section 413 for income tax purposes).
- (2) In this section “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

Derivatives

415 Loan relationships with embedded derivatives

- (1) This section applies if in accordance with generally accepted accounting practice a company treats the rights and liabilities under a loan relationship to which it is a party as divided between—
 - (a) rights and liabilities under a loan relationship (“the host contract”), and
 - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (2) The company is treated for the purposes of this Part as a party to a loan relationship whose rights and liabilities consist only of those of the host contract.

Status: This is the original version (as it was originally enacted).

- (3) For the corresponding treatment of the rights and liabilities within subsection (1)(b), see section 585 (loan relationships with embedded derivatives).

416 Election for application of sections 415 and 585

- (1) This section applies if—
- (a) a company is subject to old UK GAAP for a period of account,
 - (b) at the beginning of its first relevant period of account the company did not hold any assets (“relevant assets”) which it is not permitted under old UK GAAP to treat as mentioned in section 415(1),
 - (c) the company subsequently acquires one or more relevant assets (to which sections 415 and 585 do not apply because of the company being subject to old UK GAAP), and
 - (d) the company would have been permitted to treat the relevant assets as mentioned in section 415(1) if it had been subject to—
 - (i) international accounting standards, or
 - (ii) new UK GAAP.
- (2) The company may elect that this Part and Part 7 (derivative contracts) should apply as if sections 415 and 585 did apply.
- (3) The election has effect in relation to all relevant assets held by the company including those subsequently acquired, except as provided in subsection (4).
- (4) An election made on or after 12 March 2008 does not have effect in relation to any relevant assets in the case of which section 418 (loan relationships treated differently by connected debtor and creditor) applies.
- (5) If an election is made under this section, sections 315 to 318 (adjustments on change of accounting policy) apply as if there were a change of accounting policy consisting of the company treating its relevant assets as mentioned in section 415(1) as from the date the election has effect.
- (6) See also section 613(4) (which makes provision corresponding to subsection (5) for the purposes of Part 7).
- (7) In this section—
- “first relevant period of account”, in relation to a company, means the first period of account of the company beginning on or after 1 January 2005 (the first period in relation to which section 94A of FA 1996 (which is rewritten in section 415) had effect),
 - “old UK GAAP” means UK generally accepted accounting practice as it applied for periods of account beginning before 1 January 2005, and
 - “new UK GAAP” means UK generally accepted accounting practice as it applies for periods of account beginning on or after that date.
- (8) Section 417 makes further provision about elections under this section.

417 Further provisions about elections under section 416

- (1) An election under section 416 must be made not later than 90 days after the acquisition of the relevant assets or, if there is more than one acquisition, the first of them.

Status: This is the original version (as it was originally enacted).

- (2) The election is irrevocable.
- (3) The election has effect from the beginning of the period of account in which the first relevant asset is acquired.
- (4) In this section “relevant assets” has the same meaning as in section 416.

418 Loan relationships treated differently by connected debtor and creditor

- (1) This section applies if—
 - (a) two connected companies are party to a loan relationship, one (“the debtor”) as debtor and the other (“the creditor”) as creditor, and
 - (b) conditions A, B and C are met.
- (2) Condition A is that the debtor, in accordance with generally accepted accounting practice, treats the rights and liabilities under the loan relationship as divided between—
 - (a) rights and liabilities under a loan relationship (“the host contract”) and,
 - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (3) Condition B is that the creditor, in accordance with generally accepted accounting practice, does not treat its rights and liabilities under the loan relationship as so divided.
- (4) Condition C is that—
 - (a) the debits brought into account by the debtor under this Part in respect of the host contract for any accounting period, exceed
 - (b) the credits brought into account (otherwise than as a result of this section) by the creditor in respect of the loan relationship for the corresponding accounting period or periods of the creditor.
- (5) The creditor is treated for the purposes of this Part as bringing into account for the corresponding accounting period or periods additional credits in respect of the loan relationship of an amount equal to the excess.
- (6) But if the creditor is a party to the loan relationship as creditor during only part of the corresponding accounting period (or any of the corresponding periods), it is treated for the purposes of this Part as bringing into account for the period only such part of the excess as is just and reasonable.
- (7) Section 419 supplements this section.

419 Section 418: supplementary

- (1) References in section 418 to a company being a party to a loan relationship as debtor or creditor include a company which indirectly stands in the position of a debtor or creditor as respects the loan relationship by reference to a series of loan relationships or relevant money debts.
- (2) In subsection (1) “relevant money debt” means a money debt that would be a loan relationship if a company directly stood in the position of debtor or creditor.
- (3) For the purposes of section 418 an accounting period of the creditor corresponds with an accounting period of the debtor if—

Status: This is the original version (as it was originally enacted).

- (a) it coincides with it, or
 - (b) it is wholly or partly within it.
- (4) If a corresponding accounting period of the creditor does not coincide with that of the debtor, such apportionments as are just and reasonable are to be made for the purposes of section 418.
- (5) Two companies are connected for the purposes of section 418 if their accounting results are reflected in the consolidated group accounts of a group of companies.
- (6) Subsection (5) does not affect the application of section 839 of ICTA (how to tell whether persons are connected).
- (7) In this section “the debtor” and “the creditor” have the same meaning as in section 418.

Options etc

420 Assumptions where options etc apply

- (1) This section applies if—
- (a) the answer to any question specified in subsection (2)—
 - (i) depends on the exercise of an option by a party to a loan relationship (“A”) or A’s associate, or
 - (ii) is otherwise under the control of A or A’s associate, and
 - (b) an amortised cost basis of accounting applies for an accounting period.
- (2) The questions are—
- (a) whether any amount will become due under the relationship after the period ends,
 - (b) how much will become due under it after the period ends, and
 - (c) when after the end of the period an amount will become due under the relationship.
- (3) In determining the credits and debits to be brought into account for the accounting period in accordance with an amortised cost basis, the assumption in subsection (4) is to be made.
- (4) The assumption is that A or A’s associate will exercise the power to determine whether and on what date any amount will become due in the way which appears to be the most advantageous to A.
- (5) That way is to be determined—
- (a) as at the end of the accounting period, and
 - (b) ignoring taxation.

Status: This is the original version (as it was originally enacted).

CHAPTER 13

EUROPEAN CROSS-BORDER TRANSFERS OF BUSINESS

Introduction

421 Introduction to Chapter

- (1) This Chapter applies if—
- (a) condition A or B is met, and
 - (b) each of the companies mentioned in subsection (3)(a) or (4)(a) makes a claim under this section,
- but see section 426 (tax avoidance etc) and section 429 (disapplication of Chapter where transparent entities involved).
- (2) Sections 424 and 425 (reorganisations involving loan relationships) also apply if, in addition to the conditions in section 424(1)(a) and (b), condition C is met in relation to the transfer in the course of which the reorganisation in question occurs.
- (3) Condition A is that—
- (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom,
 - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor, and
 - (c) immediately after the transfer the transferee is within the charge to corporation tax.
- (4) Condition B is that—
- (a) a company transfers part of its business to one or more companies,
 - (b) the transferor is resident in one member State,
 - (c) the part of the transferor's business which is transferred is carried on by the transferor in the United Kingdom,
 - (d) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
 - (e) the transferor continues to carry on a business after the transfer,
 - (f) immediately after the transfer each transferee is within the charge to corporation tax, and
 - (g) the transfer—
 - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
 - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (5) Condition C is that—

Status: This is the original version (as it was originally enacted).

- (a) a UK resident company transfers part of its business to one or more companies,
 - (b) the part of the transferor’s business which is transferred to the transferees was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment, and
 - (c) the conditions in subsection (4)(d), (e) and (g) are met.
- (6) In this Chapter—
- “the transfer of business” means the transfer of business mentioned in subsection (3)(a), (4)(a) or (5)(a),
 - “transferee” has the same meaning as in subsection (3), (4) or (5), and
 - “the transferor” has the same meaning as in subsection (3), (4) or (5).
- (7) For the meaning of “company” and “resident in a member State”, see section 430.

Transfers of loan relationships at notional carrying value

422 Transfer of loan relationship at notional carrying value

- (1) This section applies if in the course of the transfer of business the transferor transfers an asset or liability representing a loan relationship to a transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship for the purposes of this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for consideration of an amount equal to the notional carrying value of the asset or liability.
- (3) For the purposes of this section—
 - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
 - (b) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (4) This section is subject to section 423 (transferor using fair value accounting).

423 Transferor using fair value accounting

- (1) This section applies instead of section 422 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)).
- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 422(1) (“the transferor’s amount”) is—
 - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes a party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
 - (b) if a liability is to be brought into account, its fair value as at that date.
- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in

Status: This is the original version (as it was originally enacted).

respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor's amount.

- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.
- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

424 Reorganisations involving loan relationships

- (1) This section applies if—
 - (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
 - (i) apply in relation to a reorganisation, or
 - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
 - (b) the original shares consist of or include an asset representing a loan relationship, and
 - (c) either—
 - (i) section 422 or 423 applies as a result of condition B in section 421 being met in relation to the transfer in the course of which the reorganisation occurs, or
 - (ii) condition C in section 421 is met in relation to that transfer.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount which would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the date when the reorganisation occurred.
- (4) In this section—

“carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),

“original holder” means a person holding the original shares immediately before the reorganisation,

“original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and

“reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.
- (5) This section is subject to—
 - (a) section 425 (original holder using fair value accounting), and
 - (b) section 429 (disapplication of Chapter where transparent entities involved).

425 Original holder using fair value accounting

- (1) This section applies instead of section 424 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is the fair value of the asset representing the loan relationship as at the date when the reorganisation occurred, or of the rights under or interest in that relationship as at that date.
- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (4) and (5) of section 423 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.
- (5) In this section—
 - “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and
 - “original holder” and “original shares” have the same meaning as in section 424.
- (6) This section is subject to section 429 (disapplication of Chapter where transparent entities involved).

Exception for tax avoidance cases

426 Tax avoidance etc

- (1) This Chapter does not apply in relation to the transfer of business if—
 - (a) the transfer of business is not effected for genuine commercial reasons, or
 - (b) the transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the transfer of business—
 - (a) the companies mentioned in section 421(3)(a), (4)(a) or (5)(a) have applied to the Commissioners for Her Majesty’s Revenue and Customs, and
 - (b) the Commissioners have notified them that they are satisfied that subsection will not have that effect.

427 Procedure on application for clearance

- (1) This section applies in relation to an application under section 426(2).

Status: This is the original version (as it was originally enacted).

- (2) The application must be in writing and must contain particulars of the operations which are to be effected.
- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.
- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).
- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

428 Decision on application for clearance

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 426(2) to the applicant—
 - (a) within 30 days of receiving the application, or
 - (b) if they give a notice under section 427(3), within 30 days of the notice being complied with.
- (2) If the Commissioners for Her Majesty's Revenue and Customs—
 - (a) notify the applicant that they are not satisfied as mentioned in section 426(2) (b), or
 - (b) do not notify their decision to the applicant within the time required by subsection (1),
 the applicant may within 30 days of the notification or of that time require them to transmit the application to the tribunal, together with any notice given and further particulars provided under section 427(3).
- (3) In that case any notification by the tribunal has effect for the purposes of section 426(2) (b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.
- (4) If any particulars provided under section 427 do not fully and accurately disclose all facts and considerations material for the decision—
 - (a) of the Commissioners for Her Majesty's Revenue and Customs, or
 - (b) of the tribunal,
 any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the tribunal is void.

Transparent entities

429 Disapplication of Chapter where transparent entities involved

- (1) This Chapter does not apply in relation to the transfer of business if the transferor is a transparent entity.
- (2) If any transferee is a transparent entity, sections 424 and 425 (reorganisations involving loan relationships) do not apply.

Status: This is the original version (as it was originally enacted).

- (3) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.
- (4) For the meaning of “resident in a member State”, see section 430.

Interpretation

430 Interpretation

- (1) In this Chapter “company” means any entity listed as a company in the Annex to the Mergers Directive.
- (2) For the purposes of this Chapter, a company is resident in a member State if—
 - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

CHAPTER 14

EUROPEAN CROSS-BORDER MERGERS

Introduction

431 Introduction to Chapter

- (1) This Chapter applies if the following conditions are met—
 - (a) conditions A to D,
 - (b) in the case of a merger within subsection (3)(a), (b) or (c), condition E, and
 - (c) in the case of a merger within subsection (3)(c) or (d), condition F,but see section 437 (tax avoidance etc) and section 438 (disapplication of Chapter where transparent entities involved).
- (2) Sections 435 and 436 (reorganisations involving loan relationships) also apply in cases that would be within subsection (1) apart from condition D not being met if, in addition to the conditions in section 435(1)(a) and (b), condition G is met in relation to a transfer in the course of the merger in which the reorganisation in question occurs.
- (3) Condition A is that—
 - (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation [\(EC\) No. 2157/2001](#) on the Statute for a European company (Societas Europaea),
 - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation [\(EC\) No. 1435/2003](#) on the Statute for a European Co-operative Society (SCE),
 - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

Status: This is the original version (as it was originally enacted).

- (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (4) Condition B is that each merging company is resident in a member State.
- (5) Condition C is that the merging companies are not all resident in the same State.
- (6) Condition D is that immediately after the merger the transferee is within the charge to corporation tax.
- (7) Condition E is that—
 - (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
 - (b) that transfer is not so made only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (8) Condition F is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).
- (9) Condition G is that—
 - (a) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment, and
 - (b) that transfer includes the transfer of an asset or liability representing a loan relationship.
- (10) In this Chapter, “the merger” and “the merging companies” have the same meaning as in this section.
- (11) See—
 - (a) section 432 for the meaning of “the transferee” and “transferor”, and
 - (b) section 439 for the meaning of “company”, “co-operative society” and “resident in a member State”.

432 Meaning of “the transferee” and “transferor”

- (1) In this Chapter, “the transferee” means—
 - (a) in relation to a merger within section 431(3)(a), the SE,
 - (b) in relation to a merger within section 431(3)(b), the SCE, and
 - (c) in relation to a merger within section 431(3)(c) or (d), the company to which assets and liabilities are transferred.
- (2) In this Chapter “transferor” means—
 - (a) in relation to a merger within section 431(3)(a), a company merging to form the SE,

Status: This is the original version (as it was originally enacted).

- (b) in relation to a merger within section 431(3)(b), a co-operative society merging to form the SCE, and
- (c) in relation to a merger within section 431(3)(c) or (d), a company transferring all its assets and liabilities.

Transfers of loan relationships at notional carrying value

433 Transfer of loan relationship at notional carrying value

- (1) This section applies if in the course of the merger a transferor transfers an asset or liability representing a loan relationship to the transferee.
- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for consideration of an amount equal to the notional carrying value of the asset or liability.
- (3) For the purposes of this section—
 - (a) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317), and
 - (b) “notional carrying value”, in relation to an asset or liability, means the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be a party to the loan relationship.
- (4) This section is subject to section 434.

434 Transferor using fair value accounting

- (1) This section applies instead of section 433 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)).
- (2) The amount which is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 433(1) (“the transferor’s amount”) is—
 - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes a party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
 - (b) if a liability is to be brought into account, its fair value as at that date.
- (3) For any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor’s amount.
- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis.

Status: This is the original version (as it was originally enacted).

- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

435 Reorganisations involving loan relationships

- (1) This section applies if—
- (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding)—
 - (i) apply in relation to a reorganisation, or
 - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
 - (b) the original shares consist of or include an asset representing a loan relationship, and
 - (c) section 433 or 434 applies in relation to a transfer in the course of the merger in which the reorganisation occurs or, in a case where those sections would apply apart from condition D in section 431 not being met, condition G in that section is met in relation to such a transfer.
- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship for consideration of an amount equal to its notional carrying value.
- (3) For the purposes of this section, the notional carrying value of that asset is the amount which would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the date when the reorganisation occurred.
- (4) In this section—
- “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317),
 - “original holder” means a person holding the original shares immediately before the reorganisation,
 - “original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
 - “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.
- (5) This section is subject to—
- (a) section 436 (original holder using fair value accounting), and
 - (b) section 438 (disapplication of Chapter where transparent entities involved).

436 Original holder using fair value accounting

- (1) This section applies instead of section 435 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares.
- (2) The amount which is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is the fair value of the asset representing

Status: This is the original version (as it was originally enacted).

the loan relationship as at the date when the reorganisation occurred, or of the rights under or interest in that relationship as at that date.

- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for consideration of an amount equal to the disposal amount.
- (4) Subsections (4) and (5) of section 434 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.
- (5) In this section—
 - “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and
 - “original holder” and “original shares” have the same meaning as in section 435.
- (6) This section is subject to section 438 (disapplication of Chapter where transparent entities involved).

Exception for tax avoidance cases

437 Tax avoidance etc

- (1) This Chapter does not apply in relation to the merger if—
 - (a) the merger is not effected for genuine commercial reasons, or
 - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (2) But subsection (1) does not prevent this Chapter from applying if before the merger—
 - (a) any of the merging companies has applied to the Commissioners for Her Majesty’s Revenue and Customs, and
 - (b) the Commissioners have notified the merging companies that they are satisfied that subsection will not have that effect.
- (3) Sections 427 and 428 have effect in relation to subsection (2) as in relation to section 426(2), taking the references in section 428 to section 426(2)(b) as references to subsection (2)(b) of this section.

Transparent entities

438 Disapplication of Chapter where transparent entities involved

- (1) This section applies if one or more of the merging companies is a transparent entity.
- (2) If as a result of the merger the assets and liabilities of a transparent entity are transferred to another company, this Chapter does not apply in relation to the transfer.

Status: This is the original version (as it was originally enacted).

- (3) If as a result of the merger the assets and liabilities of one or more other companies are transferred to a transparent entity, sections 435 and 436 do not apply to the new holding.
- (4) In this section—
- “new holding” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
- “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

Interpretation

439 Interpretation

- (1) In this Chapter—
- “company” means any entity listed as a company in the Annex to the Mergers Directive, and
- “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.
- (2) For the purposes of this Chapter, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

CHAPTER 15

TAX AVOIDANCE

Introduction

440 Overview of Chapter

- (1) This Chapter contains rules connected with tax avoidance.
- (2) In particular—
- (a) for rules about unallowable purposes and tax relief schemes and arrangements, see sections 441 to 443,
 - (b) for rules relating to credits and debits where transactions are not at arm’s length (other than credits and debits relating to exchange gains and losses), see sections 444 to 446,
 - (c) for rules relating to credits and debits relating to exchange gains and losses where transactions are not at arm’s length, see sections 447 to 452,
 - (d) for rules about connected parties deriving benefit from creditor relationships, see section 453,
 - (e) for rules dealing with tax advantages from resetting interest rates, see section 454, and

- (f) for rules dealing with disposals of rights under creditor relationships for consideration not fully recognised for accounting purposes, see section 455.

Unallowable purposes and tax relief schemes

441 Loan relationships for unallowable purposes

- (1) This section applies if in any accounting period a loan relationship of a company has an unallowable purpose.
- (2) The company may not bring into account for that period for the purposes of this Part so much of any credit in respect of exchange gains from that relationship as on a just and reasonable apportionment is attributable to the unallowable purpose.
- (3) The company may not bring into account for that period for the purposes of this Part so much of any debit in respect of that relationship as on a just and reasonable apportionment is attributable to the unallowable purpose.
- (4) An amount which would be brought into account for the purposes of this Part as respects any matter apart from this section is treated for the purposes of section 464(1) (amounts brought into account under this Part excluded from being otherwise brought into account) as if it were so brought into account.
- (5) Accordingly, that amount is not to be brought into account for corporation tax purposes as respects that matter either under this Part or otherwise.
- (6) For the meaning of “has an unallowable purpose” and “the unallowable purpose” in this section, see section 442.

442 Meaning of “unallowable purpose”

- (1) For the purposes of section 441 a loan relationship of a company has an unallowable purpose in an accounting period if, at times during that period, the purposes for which the company—
 - (a) is a party to the relationship, or
 - (b) enters into transactions which are related transactions by reference to it,include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (2) If a company is not within the charge to corporation tax in respect of a part of its activities, for the purposes of this section the business and other commercial purposes of the company do not include the purposes of that part.
- (3) Subsection (4) applies if a tax avoidance purpose is one of the purposes for which a company—
 - (a) is a party to a loan relationship at any time, or
 - (b) enters into a transaction which is a related transaction by reference to a loan relationship of the company.
- (4) For the purposes of subsection (1) the tax avoidance purpose is only regarded as a business or other commercial purpose of the company if it is not—
 - (a) the main purpose for which the company is a party to the loan relationship or, as the case may be, enters into the related transaction, or

Status: This is the original version (as it was originally enacted).

- (b) one of the main purposes for which it is or does so.
- (5) The references in subsections (3) and (4) to a tax avoidance purpose are references to any purpose which consists of securing a tax advantage for the company or any other person.

443 Restriction of relief for interest where tax relief schemes involved

- (1) A company may not bring a debit into account for the purposes of this Part in respect of interest if a tax relief scheme has been effected or tax relief arrangements have been made in relation to the transaction as a result of which the interest would be taken into account.
- (2) Subsection (1) applies whether the tax relief scheme is effected or the tax relief arrangements are made before or after the transaction.
- (3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the company from the transaction is the obtaining of a reduction in tax liability by bringing the debit into account.
- (4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit which might be expected to accrue to the company from the transaction is the obtaining of a reduction in tax liability by bringing the debit into account.
- (5) Subsection (6) applies if relief is claimed as a result of section 403 of ICTA (amounts which may be surrendered by way of group relief)—
 - (a) in respect of trading losses in a case where, in calculating those losses, debits in respect of loan relationships are treated under section 297(3) as expenses of the trade, or
 - (b) in respect of a deficit to which Chapter 16 (non-trading deficits) applies.
- (6) Any question arising under this section as to what benefit might be expected to accrue from a transaction is to be determined by reference to the claimant company and the surrendering company taken together.
- (7) In this section “the claimant company” and “the surrendering company” have the same meaning as in section 402 of ICTA (see subsection (1) of that section).

Transactions not at arm’s length: general

444 Transactions not at arm’s length: general

- (1) If—
 - (a) credits or debits in respect of a loan relationship of a company are to be brought into account for the purposes of this Part in respect of a related transaction, and
 - (b) that transaction is not a transaction at arm’s length,
 those credits or debits are to be determined for the purposes of this Part in accordance with the independent terms assumption.

- (2) The independent terms assumption is that the transaction was entered into on the terms on which it would have been entered into between knowledgeable and willing parties dealing at arm's length.
- (3) This section is subject to section 445 (disapplication of this section where Schedule 28AA to ICTA applies).
- (4) Subsection (1) does not apply to debits arising from the acquisition of rights under a loan relationship if those rights are acquired for less than market value.
- (5) In a case where the related transaction is a transaction within section 336(2) or part of a series of transactions within 336(3) (group transactions), subsection (1) does not apply if—
 - (a) section 340 (group transfers and transfers of insurance business: transfer at notional carrying value) applies as a result of that transaction or, as the case may be, that series of transactions, or
 - (b) section 340 would so apply apart from section 341 (transferor using fair value accounting).
- (6) Subsection (1) does not apply to exchange gains or losses (but see sections 447 to 452).

445 Disapplication of section 444 where Schedule 28AA to ICTA applies

- (1) Section 444 does not apply, and Schedule 28AA to ICTA (provision not at arm's length) applies instead, to credits or debits in respect of amounts which—
 - (a) fall to be adjusted for tax purposes under that Schedule, or
 - (b) are within that Schedule without falling to be so adjusted (see subsection (3)).
- (2) Subsection (1) applies despite section 464 (amounts brought into account under this Part excluded from being otherwise brought into account), but is subject to—
 - (a) section 340(7) (disapplication of Schedule 28AA to ICTA where group member replaces another as party to loan), and
 - (b) section 447(5) (disapplication of that Schedule for exchange gains and losses).
- (3) For the purposes of subsection (1), an amount is within Schedule 28AA to ICTA without falling to be adjusted under it in a case where—
 - (a) the conditions in paragraph 1(1) of that Schedule are met, and
 - (b) the actual provision does not differ from the arm's length provision.
- (4) For the way in which this Part applies where adjustments are made under Schedule 28AA to ICTA, see section 446.
- (5) In this section “the actual provision” and “the arm's length provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

446 Bringing into account adjustments made under Schedule 28AA to ICTA

- (1) This section deals with the credits and debits which are to be brought into account for the purposes of this Part as a result of Schedule 28AA to ICTA (provision not at arm's length) applying in relation to a company's loan relationships or related transactions.

Status: This is the original version (as it was originally enacted).

- (2) Subsection (3) applies if under Schedule 28AA to ICTA an amount (“the imputed amount”) is treated as an amount of profits or losses arising to a company from any of its loan relationships or related transactions.
- (3) Credits or debits relating to the imputed amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such profits or losses.
- (4) Subsection (5) applies if under Schedule 28AA to ICTA an amount is treated as interest payable under any of a company’s loan relationships.
- (5) Credits or debits relating to that amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such interest.
- (6) Subsection (7) applies if under Schedule 28AA to ICTA an amount is treated as expenses incurred by a company under or for the purposes of any of its loan relationships or related transactions.
- (7) Debits relating to the amount are to be brought into account for the purposes of this Part to the same extent as they would be in the case of an actual amount of such expenses.

Transactions not at arm’s length: exchange gains and losses

447 Exchange gains and losses on debtor relationships: loans disregarded under Schedule 28AA to ICTA

- (1) Subsections (2) and (3) apply if—
 - (a) a company has a debtor relationship in an accounting period,
 - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
 - (c) as a result of paragraph 1 of Schedule 28AA to ICTA (provision not at arm’s length) the profits and losses of the company are calculated for tax purposes for the period as if—
 - (i) the loan had not been made, or
 - (ii) part of the loan had not been made.
- (2) In a case where subsection (1)(c)(i) applies, the exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.
- (3) In a case where subsection (1)(c)(ii) applies, a proportion of the exchange gain or loss must be left out of account in determining those credits or debits.
- (4) That proportion is the proportion that the part of the loan that is treated as if it had not been made bears to the whole of the loan.
- (5) Nothing in Schedule 28AA to ICTA requires the amounts brought into account under this Part in respect of exchange gains or losses from loan relationships to be calculated on the assumption that the arm’s length provision had been made instead of the actual provision.
- (6) But subsection (5) does not affect the application of subsections (2) and (3) under subsection (1).

- (7) In this section “the arm’s length provision” and “the actual provision” have the same meaning as in Schedule 28AA to ICTA (see paragraph 1 of that Schedule).

448 Exchange gains and losses on debtor relationships: equity notes where holder associated with issuer

- (1) This section applies if—
- (a) a company has a debtor relationship in an accounting period,
 - (b) an exchange gain or loss arises in the period in respect of a liability representing the relationship, and
 - (c) the whole of any interest or other distribution out of the assets of the company in respect of securities of the company which represent the relationship is regarded as a distribution because of section 209(2)(e)(vii) of ICTA (equity notes held by company associated with issuer or by a funded company).
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part.

449 Exchange gains and losses on creditor relationships: no corresponding debtor relationship

- (1) This section applies if—
- (a) a company has a creditor relationship in an accounting period, and
 - (b) an exchange gain or loss arises in the period in respect of an asset representing the relationship.
- (2) The exchange gain or loss must be left out of account in determining the credits or debits to be brought into account for the purposes of this Part if conditions A and B are met.
- (3) Condition A is that the transaction giving rise to the loan is such that it would not have been entered into at all if the parties had been dealing at arm’s length.
- (4) Condition B is that there is no corresponding debtor relationship.
- (5) For the meaning of “corresponding debtor relationship”, see section 450.
- (6) This section is subject to section 451 (exception to this section where loan exceeds arm’s length amount).

450 Meaning of “corresponding debtor relationship”

- (1) In section 449 “corresponding debtor relationship” means a debtor relationship which—
- (a) corresponds to the creditor relationship mentioned in section 449(1), and
 - (b) is of such a kind that conditions A and B are met.
- (2) Condition A is that such credits as are mentioned in subsection (3) would fall to be brought into account for the purposes of this Part in respect of exchange gains from that debtor relationship.

Status: This is the original version (as it was originally enacted).

- (3) Those credits are credits corresponding to, and of the same amount as, the debits that would fall to be so brought into account in respect of exchange losses from the creditor relationship apart from section 449.
- (4) Condition B is that such debits as are mentioned in subsection (5) would fall to be so brought into account in respect of exchange losses from that debtor relationship.
- (5) Those debits are debits corresponding to, and of the same amount as, the credits that would fall to be so brought into account in respect of exchange gains from the creditor relationship apart from section 449.
- (6) In determining for the purposes of this section whether credits or debits would fall to be so brought into account, section 328(2) to (7) (as a result of which some exchange gains and losses are excluded from this Part) is ignored.

451 Exception to section 449 where loan exceeds arm's length amount

- (1) Section 449 does not apply if the circumstances are such that, had the parties to the relevant transaction been dealing at arm's length, the amount of the loan would have been an amount ("the arm's length amount") greater than nil, but less than its actual amount.
- (2) Accordingly, an exchange gain or loss which arises in the accounting period in respect of an asset representing the creditor relationship is not required by that section to be left out of account.
- (3) But if—
 - (a) the circumstances are as mentioned in subsection (1), and
 - (b) there is no corresponding debtor relationship,only a proportion of the exchange gain or loss may be taken into account in determining the credits or debits to be brought into account for the purposes of this Part.
- (4) That proportion is the proportion which the arm's length amount bears to the actual amount of the loan.
- (5) In this section—
 - "corresponding debtor relationship" has the same meaning as in section 449 (see section 450), and
 - "the relevant transaction" means the transaction giving rise to the loan as a result of which the company has the creditor relationship in the accounting period in question.

452 Exchange gains and losses where loan not on arm's length terms

- (1) This subsection applies if—
 - (a) a company would be treated as having a debtor relationship in an accounting period if a claim were made under paragraph 6D(2) of Schedule 28AA to ICTA in relation to that period, and
 - (b) for that period there is a connection between that company and the company that would have the corresponding creditor relationship.

- (2) If subsection (1) applies, it is assumed that such a claim is made for the purpose of determining the debits or credits to be brought into account for the purposes of this Part in respect of any exchange gains or losses arising in that period in respect of the liability representing that debtor relationship.
- (3) Subsections (4) and (5) apply if—
 - (a) because of a claim made under paragraph 6D(2) of Schedule 28AA to ICTA more than one company is treated for any purpose as having a debtor relationship represented by the same liability, or
 - (b) because of the claim that is assumed to be made under subsection (2) more than one company is so treated.
- (4) The total amount of the credits brought into account for the purposes of this Part in respect of exchange gains from those debtor relationships must not exceed the total amount of the debits brought into account for those purposes in respect of exchange losses from the corresponding creditor relationship.
- (5) The total amount of the debits brought into account for those purposes in respect of exchange losses from those debtor relationships must not exceed the total amount of the credits brought into account for those purposes in respect of exchange gains from the corresponding creditor relationship.
- (6) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

Connected parties deriving benefit from creditor relationships

453 Connected parties deriving benefit from creditor relationships

- (1) This section applies in the case of any loan relationship that is a creditor relationship of a company (“A”) if—
 - (a) the return to A from the relationship is less than a commercial return,
 - (b) another company (“B”) that is connected with A directly or indirectly derives any benefit as a result of any arrangements made—
 - (i) in consequence of the relationship, or
 - (ii) otherwise in connection with the relationship, and
 - (c) that benefit is designed to represent some or all of the amount by which the return to A from the relationship is less than a commercial return.
- (2) The credits to be brought into account by A in respect of the relationship for the purposes of this Part are to be determined on the basis of fair value accounting.
- (3) The fair value of A’s rights under the relationship must include the fair value of the benefit which is derived by B as a result of the arrangements.
- (4) In determining the return to A from the relationship for the purposes of subsection (1)
 - (a), any benefit which A derives directly or indirectly from the benefit derived by B as mentioned in subsection (1)(b) is ignored.
- (5) In this section—
 - “arrangements” includes any agreement or understanding, whether or not it is legally enforceable,
 - “benefit” includes value in any form, and

Status: This is the original version (as it was originally enacted).

“commercial return” means a return on an investment of money at a commercial rate of interest.

Tax advantages from resetting interest rates (“reset bonds”)

454 Application of fair value accounting: reset bonds etc

- (1) This section applies if—
 - (a) a company has a creditor relationship,
 - (b) the object, or one of the main objects, of the company entering into or becoming a party to the relationship was the securing of a tax advantage, and
 - (c) conditions A and B are met in relation to an asset representing the relationship.
- (2) Condition A is that there is or has at any time been a change in—
 - (a) the rate of interest payable in the case of the asset,
 - (b) the amount payable to discharge the debt,
 - (c) the time at which any payments of interest under the asset fall due, or
 - (d) the time at which any other payments under the asset fall due.
- (3) Condition B is that the difference between—
 - (a) the fair value of the asset immediately after the change, and
 - (b) the issue price of the asset,
 is equal to at least 5% of the issue price of the asset.
- (4) On and after the day on which conditions A and B become met in relation to an asset the credits and debits to be brought into account for the purposes of this Part as respects the loan relationship are to be determined using fair value accounting.
- (5) In determining the fair value of an asset for any purpose of this section, it is assumed that all amounts payable by the debtor will be paid in full as they fall due.
- (6) For the purposes of subsection (1)(b), it does not matter for whom the advantage is secured.

Disposals for consideration not fully recognised by accounting practice

455 Disposals for consideration not fully recognised by accounting practice

- (1) This section applies if in any accounting period (“the relevant accounting period”) a company with the relevant avoidance intention disposes of rights under a creditor relationship wholly or partly for consideration which—
 - (a) is not wholly in the form of money or a debt which falls to be settled by the payment of money, and
 - (b) is not fully recognised.
- (2) The relevant avoidance intention is the intention of eliminating or reducing the credits to be brought into account for the purposes of this Part.
- (3) Consideration is not fully recognised if, as a result of the application of generally accepted accounting practice, the full amount or value of the consideration is not recognised in determining the company’s profit or loss for the relevant accounting period or any other accounting period.

- (4) In determining the credits which the company must bring into account for the relevant accounting period for the purposes of this Part, it is assumed that the whole of the consideration is recognised in determining the company's profit or loss for that period.
- (5) But this section does not apply if paragraph 1(2) of Schedule 28AA to ICTA (provision not at arm's length) operates in relation to the disposal so as to increase the tax liability of the company.

CHAPTER 16

NON-TRADING DEFICITS

456 Introduction to Chapter

- (1) This Chapter applies if for any accounting period a company has a non-trading deficit from its loan relationships under section 301(6).
- (2) In this Chapter “the deficit” and “the deficit period” mean that deficit and that period respectively (but see section 458(5)).
- (3) Sections 457 and 458 set out the rules about carrying the deficit forward to later accounting periods.
- (4) Sections 459 and 460 deal with claims for the deficit to be dealt with differently.
- (5) Sections 461 to 463 deal with the consequences of such claims.

457 Basic rule for deficits: carry forward to accounting periods after deficit period

- (1) The basic rule is that the deficit must be carried forward and set off against non-trading profits of the company for accounting periods after the deficit period in accordance with subsection (3) and section 458.
- (2) That rule does not apply to so much of the deficit as—
 - (a) is surrendered as group relief under section 403 of ICTA, or
 - (b) is the subject of a claim by the company under section 459 (claim to set off deficit against profits of deficit period or earlier periods).
- (3) So much of the amount carried forward from the deficit period as is not the subject of a claim under section 458(1) must be set off against the non-trading profits of the company for the next accounting period after the deficit period.
- (4) Those profits are reduced accordingly.
- (5) In this Chapter “non-trading profits”, in relation to a company, means so much of the company's profits as does not consist of trading income for the purposes of section 393A of ICTA (setting-off of trading losses against profits of the same or an earlier period).

458 Claim to carry forward deficit to later accounting periods

- (1) The company may make a claim for so much of the amount carried forward from the deficit period as is specified in the claim to be excepted from being set off against non-

Status: This is the original version (as it was originally enacted).

trading profits of the first accounting period after the deficit period (“the first later period”).

- (2) Any such claim must be made within the period of 2 years after the end of the first later period.
- (3) Subsection (4) applies if any amount is carried forward from the deficit period under section 457(1) which—
 - (a) cannot be set off under section 457(3) against non-trading profits of the first later period, or
 - (b) is the subject of a claim under subsection (1).
- (4) That amount is treated for the purposes of this Part as if it were—
 - (a) an amount of non-trading deficit from the company’s loan relationships for the first later period, and
 - (b) an amount which falls to be carried forward and set against non-trading profits of later accounting periods under section 457(1).
- (5) Accordingly, section 457 and this section apply as if the first later period were the deficit period.

459 Claim to set off deficit against profits of deficit period or earlier periods

- (1) The company may make a claim for the whole or part of the deficit—
 - (a) to be set off against the total profits of the company for the deficit period, or
 - (b) to be carried back to be set off against profits for earlier accounting periods.
- (2) No claim may be made under subsection (1) in respect of a deficit which is surrendered as group relief under section 403 of ICTA.
- (3) Subsection (1) does not apply if the company is a charity.
- (4) For time limits and other provisions applicable to claims under subsection (1), see section 460.
- (5) For what happens when a claim is made under subsection (1)(a), see section 461.
- (6) For what happens when a claim is made under subsection (1)(b), and for the profits available for relief where such a claim is made, see sections 462 and 463.

460 Time limits and procedure for claims under section 459(1)

- (1) A claim under section 459(1) must be made within—
 - (a) the period of 2 years after the deficit period ends, or
 - (b) such further period as an officer of Revenue and Customs allows.
- (2) Different claims may be made in respect of different parts of a non-trading deficit for any deficit period.
- (3) But no claim may be made in respect of any part of a deficit to which another such claim relates.

461 Claim to set off deficit against other profits for the deficit period

- (1) This section applies if a claim is made under section 459(1)(a) for the whole or part of the deficit to be set off against profits for the deficit period.
- (2) The general rule is that the amount to which the claim relates must be set off against the profits of the company for the deficit period which are identified in the claim.
- (3) Those profits are reduced accordingly.
- (4) The general rule is subject to subsections (5) and (7).
- (5) Relief for any deficit incurred in a trade in an earlier accounting period must be given before relief under this section.
- (6) But relief under this section must be given before relief is given against profits for the deficit period—
 - (a) under section 392A(1) or 393A(1) of ICTA (losses set against profits for the same or earlier accounting periods), or
 - (b) as a result of a claim under section 459(1)(b) (carry-back) in respect of a deficit for a later period.
- (7) No relief may be given under this section against ring fence profits of the company within the meaning of Chapter 5 of Part 12 of ICTA (petroleum extraction activities).

462 Claim to carry back deficit to earlier accounting periods

- (1) This section applies if a claim is made under 459(1)(b) for the whole or part of the deficit to be carried back to be set off against profits for accounting periods before the deficit period.
- (2) The claim has effect only if it relates to an amount equal to the lesser of—
 - (a) so much of the deficit as is not an amount in relation to which a claim is made under section 459(1)(a), and
 - (b) the total amount of the profits available for relief under this section.
- (3) Section 463 explains which profits are so available.
- (4) The amount to which the claim relates is set off against those profits by treating them as reduced accordingly.
- (5) If those profits are profits for more than one accounting period, the relief is applied by setting off the amount to which the claim relates against profits for a later period before setting off any remainder of that amount against profits for an earlier period.

463 Profits available for relief under section 462

- (1) The profits available for relief under section 462 are the amounts which (apart from the relief) would be charged under this Part as profits for accounting periods ending within the permitted period, after giving every prior relief.
- (2) In this section—

“the permitted period” means the period of 12 months immediately before the deficit period, and

Status: This is the original version (as it was originally enacted).

“prior relief” means a relief which subsection (5) provides must be given before relief under section 462.

- (3) If an accounting period ending within the permitted period begins before it, only a part of the amount which (apart from the relief) would be chargeable under this Part for that period, after giving every prior relief, is available for relief under section 462.
- (4) That part is so much as is proportionate to the part of the accounting period in the permitted period.
- (5) The reliefs which must be given before relief under section 462 are—
 - (a) relief as a result of a claim under section 459(1)(a) (claim for deficit to be set off against total profits for the deficit period),
 - (b) relief in respect of a loss or deficit incurred or treated as incurred in an accounting period before the deficit period,
 - (c) relief under section 338 of ICTA (charges on income deducted from total profits) in respect of payments made wholly and exclusively for the purposes of a trade,
 - (d) relief under section 393A of ICTA (losses set off against profits of the same, or an earlier, accounting period), and
 - (e) if the company is a company with investment business for the purposes of Part 16 (companies with investment business)—
 - (i) any deduction in respect of management expenses under section 1219 (expenses of management of a company’s investment business),
 - (ii) relief under section 338 of ICTA in respect of payments made wholly and exclusively for the purposes of its business, and
 - (iii) any allowance under Part 2 of CAA 2001 (plant and machinery allowances).

CHAPTER 17

PRIORITY RULES

464 Priority of this Part for corporation tax purposes

- (1) The amounts which are brought into account in accordance with this Part in respect of any matter are the only amounts which may be brought into account for corporation tax purposes in respect of it.
- (2) Subsection (1) is subject to any express provision to the contrary.
- (3) For further provisions relating to the rule in this section, see in particular—
 - (a) section 445(2) (disapplication of section 444 where Schedule 28AA to ICTA applies),
 - (b) section 465 (exclusion of distributions except in tax avoidance cases),
 - (c) section 700 (relationship of Part 7 to this Part),
 - (d) section 400(9A) of ICTA (write-off of government investment),
 - (e) section 494 of ICTA (petroleum extraction activities: loan relationships),
 - (f) section 795(4) of ICTA (computation of income subject to foreign tax),
 - (g) section 811(3) of ICTA (deduction for foreign tax where no credit available),

Status: This is the original version (as it was originally enacted).

- (h) section 83(2ZA) of FA 1989 (life assurance: receipts to be taken into account), and
 - (i) paragraph 3(5) of Schedule 12 to F(No.2)A 1992 (banks etc in compulsory liquidation: taxation of certain receipts).
- (4) See also the following sections (under which amounts prevented from being brought into account under this Part are treated as if they were so brought into account for the purposes of this section)—
- (a) section 327(5) and (6) (disallowance of imported losses etc), and
 - (b) section 441(4) and (5) (loan relationships for unallowable purposes).

465 Exclusion of distributions except in tax avoidance cases

- (1) Credits or debits relating to any amount falling, when paid, to be treated as a distribution must not be brought into account for the purposes of this Part, except, in the case of credits, so far as they are avoidance arrangement amounts (see subsection (4)).
- (2) Nothing in section 464(1) prevents amounts that are not brought into account because of subsection (1) from being brought into account for corporation tax purposes otherwise than under this Part.
- (3) But see the following provisions (under which some amounts are prevented from being distributions for corporation tax purposes and accordingly are within this Part)—
 - (a) section 523(2)(b) (shares subject to outstanding third party obligations and non-qualifying shares),
 - (b) section 209(6A) of ICTA (relevant alternative finance return under alternative finance arrangements),
 - (c) section 477A(3)(b) of ICTA (building society dividends etc), and
 - (d) section 486(1) and (9) of ICTA (dividends, bonuses and other sums payable to shareholders in registered industrial and provident societies and UK agricultural or fishing co-operatives).
- (4) For the purposes of this section an amount is an avoidance arrangement amount if it arises in consequence of, or otherwise in connection with, arrangements of which the purpose, or one of the main purposes, is securing a tax advantage for any person.
- (5) In this section “arrangements” includes any scheme, agreement or understanding, transaction or series of transactions.

CHAPTER 18

GENERAL AND SUPPLEMENTARY PROVISIONS

Connections between persons

466 Companies connected for an accounting period

- (1) This section and sections 467 to 471 have effect for the purposes of any provisions of this Part which apply this section (but this does not affect the application of section 1316(1) (meaning of “connected” persons) for other purposes of this Part).

Status: This is the original version (as it was originally enacted).

- (2) There is a connection between a company (“A”) and another company (“B”) for an accounting period if there is a time in the period when—
- (a) A controls B,
 - (b) B controls A, or
 - (c) A and B are both controlled by the same person.
- (3) But A and B are not taken to be controlled by the same person just because they have been under the control of—
- (a) the Crown,
 - (b) a Minister of the Crown,
 - (c) a government department,
 - (d) a Northern Ireland department,
 - (e) a foreign sovereign power, or
 - (f) an international organisation.
- (4) Subsection (2) is subject to section 468 (connection between companies to be ignored in some circumstances).
- (5) For a case where companies are treated as if one controlled the other, see section 383(5) (inter-partnership lending between connected company partners etc).
- (6) Section 472 (meaning of “control”) applies for the purposes of this section.

467 Connections where partnerships are involved

- (1) This section applies for the purposes of the provisions which apply section 466 (“the relevant provisions”) if—
- (a) a trade or business is carried on by a firm, and
 - (b) the firm stands in the position of a creditor or debtor as respects a money debt.
- (2) The questions about connections specified in subsection (3) must be determined as if each of the partners in the firm separately (rather than the firm), stood in that position as respects the debt to the extent of that partner’s appropriate share.
- (3) The questions are—
- (a) whether for the purposes of this Part there is a connection for the purposes of the relevant provisions between any two companies for an accounting period in the case of a loan relationship, and
 - (b) how far any amount is treated under this Part in any particular way as a result of there being, or not being, such a connection.
- (4) For the purposes of subsection (2), a partner’s “appropriate share” is the same share as the share in which any profit or loss for the accounting period in question would be apportioned to the partner in accordance with the firm’s profit-sharing arrangements.
- (5) The references in subsections (2) to (4) to partners do not include references to the general partner of a limited partnership which is a collective investment scheme.

468 Connection between companies to be ignored in some circumstances

- (1) In the case of a company (“the creditor”) which has a creditor relationship, any connection for an accounting period between the creditor and another company which

Status: This is the original version (as it was originally enacted).

stands in the position of a debtor as respects the debt is ignored for the purposes of the relevant provisions if the creditor is a party to the relationship in circumstances where—

- (a) conditions A to E in section 469 (creditors who are financial traders) are met, or
 - (b) conditions A, B and C in section 471 (creditors who are insurance companies carrying on basic life assurance and general annuity business) are met.
- (2) In subsection (1) “the relevant provisions” means any provisions of this Part which apply section 466.
 - (3) Subsection (4) applies if for any accounting period subsection (1) has effect in the case of a creditor relationship of a company.
 - (4) Subsection (1) does not apply for determining whether there is a connection between the two companies for the purposes of so much of any of the relevant provisions or of section 467 as relates to the corresponding debtor relationship.
 - (5) For the purposes of this section and section 469, a company is treated as standing in the position of a debtor if it indirectly stands in that position by reference to a series of loan relationships or relevant money debts.
 - (6) In subsection (5) “relevant money debt” means a money debt which would be a loan relationship if a company directly stood in the position of creditor or debtor.

469 Creditors who are financial traders

- (1) This section sets out the conditions referred to in section 468(1)(a).
- (2) Condition A is that the creditor disposes of or acquires assets representing creditor relationships in the course of carrying on any activities forming an integral part of a trade carried on by it in the accounting period.
- (3) Condition B is that the asset representing the creditor relationship was acquired in the course of those activities.
- (4) Condition C is that that asset—
 - (a) is listed on a recognised stock exchange at the end of that period, or
 - (b) is a security the redemption of which must occur within 12 months of its issue.
- (5) Condition D is that there is a time in that period when assets of the same kind as the asset representing the creditor relationship are beneficially owned by persons other than the creditor.
- (6) Condition E is that in that period there is not more than 3 months in total during which the equivalent of at least 30% of the assets of that kind is beneficially owned by connected companies.
- (7) Section 470 supplements this section.

470 Section 469: supplementary provisions

- (1) For the purposes of conditions D and E in section 469 assets are taken to be of the same kind if they—

Status: This is the original version (as it was originally enacted).

- (a) are treated as being of the same kind by the practice of any recognised stock exchange, or
 - (b) would be so treated if dealt with on such an exchange.
- (2) For the purposes of condition E in section 469 an asset is beneficially owned by a connected company if there is a connection between—
- (a) the company which beneficially owns it, and
 - (b) a company which stands in the position of a debtor as respects the money debt by reference to which any loan relationship represented by that asset exists.
- (3) Whether there is a connection for the purposes of subsection (2) at any time in an accounting period (“the relevant time”) is determined in accordance with section 466(2), (3), (5) and (6)—
- (a) applying the conditions in section 466(2) only at the relevant time, and
 - (b) ignoring section 468.

471 Creditors who are insurance companies carrying on BLAGAB

- (1) This section sets out the conditions referred to section 468(1)(b)).
- (2) Condition A is that the creditor is an insurance company carrying on basic life assurance and general annuity business in the accounting period.
- (3) Condition B is that the asset representing the creditor relationship is linked for that period to that business.
- (4) Condition C is that conditions C, D and E in section 469 are met in relation to that asset.

472 Meaning of “control”

- (1) This section has effect for the purposes of any provisions of this Part which apply this section (but this does not affect the application of section 1316(2) (meaning of “control”) for other purposes of this Part).
- (2) For those purposes “control”, in relation to a company, means the power of a person to secure that the affairs of the company are conducted in accordance with the person’s wishes—
 - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
 - (b) as a result of any powers conferred by the articles of association or other document regulating the company or any other company.
- (3) Trading shares held by a company and any voting power or other powers arising from such shares are ignored for the purposes of this section.
- (4) For the purposes of subsection (3) shares held by a company are trading shares if—
 - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
 - (b) the shares are not assets of an insurance company’s long-term insurance fund.
- (5) Subsection (6) applies in the case of any firm to which section 1259 (calculation of firm’s profits and losses) applies.

- (6) For any accounting period of the firm, property, rights or powers held or exercisable for its purposes are treated for the purposes of this section as if—
 - (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
 - (b) the apportionment had been in the same shares as those in which the profit or loss of the period would be apportioned between the partners in accordance with the firm’s profit-sharing arrangements.
- (7) In subsection (6) the references to partners do not include references to the general partner of a limited partnership which is a collective investment scheme.

473 Meaning of “major interest”

- (1) In this Part references to a company (“A”) having a major interest in another company (“B”) are to be read as follows.
- (2) A has a major interest in B at any time if at that time—
 - (a) A and one other person (“C”), taken together, have control of B, and
 - (b) A and C each have interests, rights and powers representing at least 40% of the holdings, rights and powers as a result of which A and C are taken to have control of B.
- (3) The reference in subsection (2)(b) to interests, rights and powers does not include interests, rights or powers arising from shares held by a company if—
 - (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company, and
 - (b) the shares are not assets of an insurance company’s long-term insurance fund.
- (4) Section 474 makes provision about how this section operates where connected companies or partnerships are involved.
- (5) For the purposes of this section and section 474, a company (“D”) is connected with another company (“E”) if—
 - (a) D controls E,
 - (b) E controls D, or
 - (c) D and E are both controlled by the same company.
- (6) Section 472 (meaning of “control”) applies for the purposes of this section and section 474.
- (7) If two or more persons taken together have the power mentioned in section 472(2) (as read with the other provisions of section 472) as respects the affairs of a company (“B”), they are taken for the purposes of subsection (2)(a) to have control of B.

474 Treatment of connected companies and partnerships for section 473

- (1) For the purposes of section 473(2), all the interests, rights and powers of any company connected with another company are attributed to the other company before determining any question—
 - (a) whether two persons taken together have control of a company at any time, or
 - (b) whether a person has at any time interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of a company.

Status: This is the original version (as it was originally enacted).

- (2) If section 1259 (calculation of firm’s profits and losses) applies, any property, rights or powers held or exercisable for the purposes of the firm are treated for the purposes of section 473, as respects any time in an accounting period of the firm, on the basis of the assumptions in subsection (3).
- (3) The assumptions are that—
 - (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners in the firm severally, and
 - (b) the apportionment was in the same shares as those in which the profit or loss of the accounting period would be apportioned between the partners under the firm’s profit-sharing arrangements.
- (4) Subsection (5) applies if—
 - (a) a trade or business is carried on by a firm, and
 - (b) the firm stands in the position of a creditor or debtor as respects a money debt.
- (5) The questions in subsection (6) are to be determined as if each of the partners in the firm separately, instead of the firm, stood in the position of a creditor or, as the case may be, a debtor as respects the money debt to the extent of that partner’s appropriate share (see subsection (8)).
- (6) The questions are—
 - (a) whether a company has a major interest in another company for an accounting period in the case of a loan relationship, or
 - (b) how far any amount is treated under this Part in any particular way as a result of a company having or, as the case may be, not having such a major interest.
- (7) The references to partners in subsections (3) and (5) do not include a reference to the general partner of a limited partnership which is a collective investment scheme.
- (8) For the purposes of subsection (5), a partner’s “appropriate share” is the same share as the partner’s share under the firm’s profit-sharing arrangements of any profit or loss calculated in accordance with section 1259 for the accounting period in question.

475 Meaning of expressions relating to exchange gains and losses

- (1) References in this Part to exchange gains or exchange losses, in relation to a company, are references respectively to—
 - (a) profits or gains which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company, or
 - (b) losses which so arise.
- (2) If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, for the purposes of this Part an exchange gain of nil is taken to arise in the case of that comparison.
- (3) The Treasury may make provision by regulations as to the way in which exchange gains or losses are to be calculated for the purposes of this section in a case where fair value accounting is used by the company.
- (4) The regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.

- (5) Any reference in this Part to an exchange gain or loss from a loan relationship of a company is a reference to an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company.

Other general definitions

476 Other definitions

- (1) In this Part—

“alternative finance arrangements” has the meaning given in section 501(2),

“associate” has the meaning given by section 417(3) of ICTA,

“collective investment scheme” has the meaning given by section 235 of FISMA 2000,

“debt” includes a debt the amount of which is to be ascertained by reference to matters which vary from time to time,

“equity instrument” has the meaning it has for accounting purposes,

“gilt-edged securities” means any securities which—

- (a) are gilt-edged securities for the purposes of TCGA 1992 (see Schedule 9 to that Act), or

- (b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they are issued,

“impairment” includes uncollectability,

“impairment loss” means a debit in respect of the impairment of a financial asset,

“income statement” has the meaning it has for accounting purposes,

“international organisation” has the meaning given in subsection (2) (and also see subsection (3)),

“loan” includes any advance of money and related expressions are to be read accordingly,

“non-trading credit” and “non-trading debit” are to be read in accordance with section 301 (but also see sections 330 and 482(1)),

“profit-sharing arrangements”, in relation to a firm, has the meaning given in section 1262(4) (allocation of firm’s profits or losses between partners),

“share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise (except as provided in section 522(6)), but does not include a share in a building society,

“statement of changes in equity” has the meaning it has for accounting purposes,

“statement of comprehensive income” has the meaning it has for accounting purposes,

“statement of income and retained earnings” has the meaning it has for accounting purposes,

“statement of recognised income and expense” has the meaning it has for accounting purposes,

“statement of total recognised gains and losses” has the meaning it has for accounting purposes,

Status: This is the original version (as it was originally enacted).

“tax advantage” has the meaning given by section 840ZA of ICTA,
“this Part” is to be read in accordance with section 294(2), and
“trade” and “purposes of trade” are to be read in accordance with
section 298.

- (2) In this Part “international organisation” means an organisation of which—
- (a) two or more sovereign powers are members, or
 - (b) the governments of two or more sovereign powers are members.
- (3) If, in any proceedings, any question arises whether a person is an international organisation for the purposes of any provision of this Part, a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question is conclusive evidence of that fact.