Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 6

TAX ARBITRAGE

Deduction schemes

236 Schemes involving hybrid entities

(1) A scheme is a deduction scheme if a party to a transaction forming part of the scheme meets conditions A and B.

(2) Condition A is that the party is regarded as being a person under the tax law of any territory.

(3) Condition B is that the party's profits or gains are treated, for the purposes of a relevant tax imposed under the law of any territory, as the profits or gains of a person or persons other than the person mentioned in condition A.

(4) Condition B is not met just because the party's profits or gains are subject to a rule that—

(a) is similar to that in section 747(3) of ICTA (imputation of chargeable profits of controlled foreign company), and

(b) has effect under the tax law of any territory outside the United Kingdom.

(5) For the purposes of this section, the following are relevant taxes—

(a) income tax,

(b) corporation tax, and

(c) any tax of a similar character to income tax or corporation tax that is imposed by the law of a territory outside the United Kingdom.

237 Instruments of alterable character

(1) A scheme is a deduction scheme if one of the parties to the scheme is party to an instrument within subsection (2).

(2) An instrument is within this subsection if under the law of a particular territory any party to the instrument may alter its tax characteristics.

(3) The reference to altering an instrument's tax characteristics is to making an alteration which, under the law of a particular territory, has the effect of determining, for the tax purposes of that territory, whether the instrument is taken into account as giving rise—

(a) to income,

(b) to capital, or

(c) to neither.

(4) An instrument is taken into account as giving rise to capital if any gain on the disposal of the instrument—

(a) would be a chargeable gain, or

(b) would be such a gain if the person making the disposal were UK resident.

238 Shares subject to conversion

(1) A scheme is a deduction scheme if it includes—

(a) a company issuing shares subject to conversion, or

(b) such an amendment of rights attaching to shares issued by a company that the shares become shares subject to conversion.

(2) For the purposes of subsection (1)(a) a company's shares are shares subject to conversion if conditions A and B are met.

(3) For the purposes of subsection (1)(b) a company's shares are shares subject to conversion if conditions A and C are met.

(4) Condition A is that the rights attached to the shares include provision as a result of which a holder of such shares is entitled, on the occurrence of an event, to acquire securities in a company by conversion or exchange.

(5) Condition B is that at the time when the shares are issued the company could reasonably expect that event to occur.

(6) Condition C is that at the time when the rights attaching to the shares are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

239 Securities subject to conversion

(1) A scheme is a deduction scheme if it includes—

(a) a company issuing securities subject to conversion, or

(b) such an amendment of rights attaching to securities issued by a company that the securities become securities subject to conversion.

(2) For the purposes of subsection (1)(a) a company's securities are securities subject to conversion if conditions A and B are met.

(3) For the purposes of subsection (1)(b) a company's securities are securities subject to conversion if conditions A and C are met.

(4) Condition A is that the rights attached to the securities include provision as a result of which a holder of such securities is entitled, on the occurrence of an event, to acquire shares in a company by conversion or exchange.

(5) Condition B is that at the time when the securities are issued the company could reasonably expect that event to occur.

(6) Condition C is that at the time when the rights attaching to the securities are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

240 Debt instruments treated as equity

(1) A scheme is a deduction scheme if it includes a debt instrument issued by a company that is treated as equity in the company under generally accepted accounting practice.

(2) In this section "debt instrument" means an instrument issued by a company that—
  (a) represents a loan relationship of the company, or
  (b) would do so if the company were UK resident.

241 Scheme including issue of shares not conferring qualifying beneficial entitlement

(1) A scheme is a deduction scheme if—
  (a) it includes a company issuing shares to a connected person, and
  (b) the shares do not meet conditions A, B and C.

(2) Condition A is that on their issue the shares are ordinary shares that are fully paid-up.

(3) Condition B is that when the issue takes place there is no arrangement or understanding under which the rights attaching to the shares may be amended.

(4) Condition C is that, at all times in the accounting period of the company in which the issue takes place, each of the shares confers a beneficial entitlement to the appropriate proportion of—
  (a) any profits available for distribution to equity holders of the company, and
  (b) any assets of the company available for distribution to its equity holders on a winding-up.

(5) For the purposes of subsection (4) the appropriate proportion, in relation to a share, is the same as the proportion of the issued share capital represented by that share.

(6) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (4) as it applies for the purposes of the provisions specified in section 157(1) of that Act.

242 Scheme including transfer of rights under a security

(1) A scheme is a deduction scheme if each of conditions A to D is met.

(2) Condition A is that the scheme includes a transaction or a series of transactions under which a person ("the transferor")—

(a) transfers to one or more other persons rights to receive a payment under a security, or

(b) otherwise secures that one or more other persons are similarly benefited.

(3) A person is similarly benefited for these purposes if the person receives a payment which, but for the transaction or series of transactions, would have arisen to the transferor.

(4) Condition B is that—

(a) the transferor, and

(b) at least one of the persons to whom a transfer of rights is made or a similar benefit is secured,

are connected with each other.

(5) Condition C is that, immediately after the transfer of rights or the securing of the similar benefit, two or more persons—

(a) hold rights to receive a payment under the security, or

(b) enjoy a similar benefit.

(6) Condition D is that, immediately after the transfer of rights or the securing of the similar benefit, the market value of all the relevant benefits of such of those persons as are connected equals or exceeds the market value of all other relevant benefits.

(7) In subsection (6) "relevant benefits" means—

(a) rights to receive a payment under the security, and

(b) similar benefits.

(8) In this section "security" includes an agreement under which a person receives an annuity or other annual payment (whether it is payable annually or at shorter or longer intervals) for a term which is not contingent on the duration of a human life or lives.