



Finance Act 2012

2012 CHAPTER 14

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 3

CORPORATION TAX: GENERAL

Anti-avoidance

22 Treatment of the receipt of manufactured overseas dividends

- (1) Part 17 of CTA 2010 (manufactured payments and repos) is amended as follows.
- (2) In section 793 (company receiving manufactured overseas dividend from UK resident etc: amount treated as withheld on account of overseas tax), after subsection (7) insert—
 - “(8) If, in accordance with this section, the amount mentioned in section 792(3)(b) is not the amount deducted under section 922(2) of ITA 2007, nothing in the Tax Acts is to be read as having the effect that, in relation to the persons mentioned in section 792(2) for the purposes mentioned there, the difference between those amounts is to be regarded as an amount on account of income tax.”
- (3) In section 812 (deemed manufactured payments: stock lending arrangements), after subsection (5) insert—
 - “(5A) Where section 792 or 794 has effect in accordance with subsection (4) or (5), nothing in the Tax Acts is to be read as having the effect that, in relation to the persons mentioned in section 792(2) or 794(2) for the purposes mentioned there, the amount that would otherwise have been treated as an amount

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withheld on account of overseas tax is to be regarded as an amount on account of income tax.”

- (4) The amendments made by this section have effect in relation to overseas dividends (within the meaning of Part 17 of CTA 2010) paid on or after 15 September 2011.

23 Loan relationships: debts becoming held by connected company

- (1) Chapter 6 of Part 5 of CTA 2009 (loan relationships: connected companies and impairment losses and releases of debt) is amended as follows.

- (2) In section 362 (parties becoming connected where creditor’s rights subject to impairment adjustment)—

- (a) in subsection (1)—

- (i) omit paragraph (c) (impairment in pre-connection carrying value of creditor’s loan relationship), and
(ii) omit the “and” before that paragraph and, at the end of paragraph (a), insert “and”,

- (b) for subsections (3) and (4) substitute—

“(3) The amount treated as released is the amount (if any) by which the pre-connection carrying value in D’s accounts exceeds the pre-connection carrying value in C’s accounts.

- (4) In subsection (3)—

“the pre-connection carrying value in D’s accounts” means the amount that would be the carrying value of the liability representing the loan relationship in D’s accounts if a period of account had ended immediately before C and D became connected, and

“the pre-connection carrying value in C’s accounts” means—

- (a) in any case where C was a party to the loan relationship as creditor on the last day of the period of account ending immediately before the one in which C and D became connected, the cost of the asset representing the loan relationship which would be given on that day on an amortised cost basis of accounting, and
(b) in any other case, the amount or value of any consideration given by C for the acquisition of the asset representing the loan relationship.”, and”

- (c) in subsection (5)—

- (i) in the opening words, for “the carrying value is determined taking no account of—” substitute “no account is to be taken of—”,
(ii) at the end of paragraph (a) insert “or”, and
(iii) omit paragraph (c) (together with the “or” before that paragraph), and

- (d) in the heading, at the end insert “**etc**”.

- (3) After section 363 insert—

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“363A Arrangements for avoiding section 361 or 362

- (1) This section applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party in entering into them (or any part of them) is—
 - (a) to avoid an amount being treated as released under section 361 or 362, or
 - (b) to reduce the amount which is treated as released under section 361 or 362.
- (2) The arrangements (or part of the arrangements) are not to achieve that effect (so that an amount, or a greater amount, falls to be treated as released under section 361 or 362).
- (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”
- (4) The amendments made by subsection (2) have effect as follows—
 - (a) the amendments made by paragraphs (a), (b) and (d) have effect in relation to any case where the companies become connected on or after 27 February 2012, but if the companies become connected on or after that date but before 1 April 2012 section 362 of CTA 2009 has effect as if the following were substituted for subsections (3) and (4) of that section—
 - “(3) The amount treated as released is whichever is the greater of the following amounts—
 - (a) the amount (if any) that the pre-connection carrying value in C’s accounts would have been adjusted for impairment if a period of account had ended immediately before the companies became connected, and
 - (b) the amount (if any) by which the pre-connection carrying value in D’s accounts exceeds the pre-connection carrying value in C’s accounts.
 - (4) In subsection (3) “the pre-connection carrying value”, in relation to C’s accounts or D’s accounts, means the amount that would be the carrying value of the asset or liability representing the loan relationship in the accounts if a period of account had ended immediately before the companies became connected.”, and”
 - (b) the amendments made by paragraph (c) have effect in relation to any case where the companies become connected on or after 1 April 2012, and section 363 of CTA 2009 applies for the purposes of this subsection as it applies for the purposes of sections 361 to 362 of that Act.
- (5) The amendment made by subsection (3) has effect in relation to—
 - (a) arrangements entered into on or after 27 February 2012, or
 - (b) arrangements entered into before that date where the amount is treated as released, or would have been treated as released, on or after that date.

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- (6) But subsection (5)(b) does not apply if the amount is treated as released, or would have been treated as released, pursuant to an unconditional obligation in a contract made before 27 February 2012.
- (7) An “unconditional” obligation is one which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).
- (8) The conditions in section 361(1)(a) to (c) of CTA 2009 are treated as met (and the remaining provisions of that section have effect accordingly) in any case where—
 - (a) arrangements are entered into by any party at any time,
 - (b) directly or indirectly in consequence of, or otherwise in connection with, those arrangements a company (“C”) becomes a party to a loan relationship as creditor,
 - (c) the time at which C becomes a party to the loan relationship falls on or after 1 December 2011 but before 27 February 2012,
 - (d) directly or indirectly in consequence of, or otherwise in connection with, those arrangements C subsequently becomes connected with another company (“D”) which is a party to the loan relationship as debtor, and
 - (e) that subsequent time falls before 27 February 2012.
- (9) For the purposes of subsection (8)—
 - (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
 - (b) the reference to C becoming connected with D is to be read in accordance with section 363 of CTA 2009.
- (10) Subsections (8) and (9) are to have effect as if they were contained in Part 5 of CTA 2009 (and the cases in which section 361 of CTA 2009 has effect in accordance with subsection (8) include any case where C or D is a member of a firm which becomes or is a party to the loan relationship and in that case references to C or D (other than references to the connection which C or D has with a company) are references to the firm).
- (11) For the purpose of applying section 361 of CTA 2009 in accordance with subsection (8) no account is to be taken of anything done on or after 27 February 2012.
- (12) If section 361 of CTA 2009 has effect in accordance with subsection (8), section 362 of that Act does not apply.

24 Companies carrying on businesses of leasing plant or machinery

- (1) CTA 2010 is amended as follows.
- (2) In section 385 (sales of lessors: no carry back of the expense)—
 - (a) for subsections (2) and (3) substitute—
 - “(2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company’s total profits as derive from the income.
 - (3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.”, and

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- (b) in the heading, for “**No carry back of the expense**” substitute “**No carry back of loss against the income**”.
- (3) In section 392 (sales of lessors: “relevant change in relationship”), at the end insert “or section 394ZA (company joining tonnage tax group)”.
- (4) After section 394 insert—

“394ZA Company joining tonnage tax group

There is a relevant change in the relationship between A and a principal company of A on any day if—

- (a) on that day A becomes a member of a tonnage tax group for the purposes of Schedule 22 to FA 2000 without entering tonnage tax on that day, or
 - (b) the day ends immediately before the day on which, for the purposes of that Schedule, A both becomes a member of a tonnage tax group and enters tonnage tax.”
- (5) In section 394A (sales of lessors: “qualifying change of ownership”)—
 - (a) the existing text becomes subsection (1), and
 - (b) after that subsection insert—
 - “(2) If the qualifying change of ownership would (but for this subsection) occur on any day as a result of—
 - (a) section 393 or 394ZA, or
 - (b) section 394 or 394ZA,it is treated instead for the purposes of the sales of lessors Chapters as occurring on that day solely as a result of section 394ZA.”
 - (6) In section 427 (sales of lessors: no carry back of the expense)—
 - (a) for subsections (2) and (3) substitute—
 - “(2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company’s total profits as derive from the income.
 - (3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.”, and
 - (b) in the heading, for “**No carry back of the expense**” substitute “**No carry back of loss against the income**”.
 - (7) In section 950 (transfers of trade without a change of ownership: transfers of trade involving business of leasing plant or machinery), after subsection (3) insert—
 - “(3A) For the purposes of subsection (2)(a) the principal company or companies of the predecessor immediately before the transfer are not to be regarded as the same as the principal company or companies of the successor immediately afterwards (so far as they would otherwise have been so regarded) if—
 - (a) there is a relevant change in the relationship between the successor and a principal company of the successor within section 394ZA (company joining tonnage tax group), and

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- (b) that change occurs on or before the transfer day (whether the change occurs on or after 21 March 2012 or before that date).”
- (8) In Schedule 22 to FA 2000 (tonnage tax), after paragraph 79 insert—
- “79A (1) This paragraph applies if—
- (a) a balancing charge under this Part of this Schedule arises to the company on the disposal of any plant or machinery, and
- (b) the plant or machinery is taken into account in calculating income that the company is treated as receiving under section 383 or 417 of the Corporation Tax Act 2010 (sales of lessors) as a result of section 394ZA of that Act (company joining tonnage tax group).
- (2) The balancing charge is to be reduced by the relevant part of the sales of lessors expense so far as relief has not previously been given for that expense (whether under this sub-paragraph or otherwise).
- (3) “The sales of lessors expense” means—
- (a) the expense which the company is treated as incurring under section 383 or 417 of the Corporation Tax Act 2010 as a result of section 394ZA of that Act, or
- (b) if section 386 or 419 of that Act applies or has applied, the expense which derives from the expense within paragraph (a).
- (4) If the sales of lessors expense is incurred at a time when the company is in tonnage tax, the “relevant part” of that expense is so much of it as, on a just and reasonable basis, is attributable to the matters set out in paragraph 56(1)(a) or (b).
- (5) If—
- (a) the sales of lessors expense is not incurred at a time when the company is in tonnage tax,
- (b) that expense is taken into account in calculating a loss made by the company in a trade, and
- (c) the loss is one to which paragraph 56 applies,
- the “relevant part” of the sales of lessors expense is so much of the apportioned loss as, on a just and reasonable basis, is derived from the sales of lessors expense.
- (6) The reference here to the apportioned loss is to the loss that is attributable to the matters set out in paragraph 56(1)(a) or (b).”
- (9) The amendments made by subsections (2) and (6) have effect—
- (a) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 21 March 2012 and entering tonnage tax at the same time,
- (b) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time, or
- (c) where the relevant day is on or after 21 March 2012 (in any case not within paragraph (a) or (b)).
- (10) The amendments made by subsections (3) to (5) and (8) have effect—

- (a) where a company becomes a member of a tonnage tax group on or after 21 March 2012 and enters tonnage tax at the same time, or
 - (b) where a company becomes a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time.
- (11) The amendment made by subsection (7) has effect—
- (a) except in a case within paragraph (b), where the transfer day is on or after 21 March 2012, and
 - (b) in a case where the relevant change in the relationship occurs as a result of a company becoming a member of a tonnage tax group without entering tonnage tax at the same time, where the transfer day is on or after 23 April 2012.