
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 12. (See end of Document for details)

SCHEDULES

SCHEDULE 12

Section 28

DISGUISED INTEREST

Key amendments to Part 4 of ITTOIA 2005

- 1 Part 4 of ITTOIA 2005 (savings and investment income) is amended in accordance with paragraphs 2 and 3.
- 2 In section 365(1) (overview of Part 4)—
 - (a) after paragraph (a) insert—

“(aa) Chapter 2A (disguised interest),” and
 - (b) omit paragraph (k).
- 3 After Chapter 2 insert—

“CHAPTER 2A

DISGUISED INTEREST

Charge to tax on disguised interest

- 381A) This Chapter applies where a person is party to an arrangement which produces for the person a return in relation to any amount which is economically equivalent to interest.
- (2) Income tax is charged on the return if the return is not charged to income tax under or as a result of any other provision of this Act or any other Act.
 - (3) Subsection (2) does not apply to a return that would be charged to income tax under or as a result of another provision but for an exemption.
 - (4) For the purposes of this Chapter a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
 - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
 - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
 - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.

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- (5) In subsection (4)(c) “the relevant time” means the time when the person becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the person.
- (6) In this Chapter “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Income charged

381B Tax is charged under this Chapter on the full amount of the return, or any part of the return, arising in the tax year.

Person liable

381C The person liable for any tax charged under this Chapter is the person receiving or entitled to the return or the part of the return.

Avoidance of double taxation

- 381D) This section applies if at any time a tax other than income tax (“the other tax”) is charged in relation to a return on which income tax is charged under this Chapter.
- (2) In order to avoid a double charge to tax in respect of the return, a person may make a claim for one or more consequential adjustments to be made in respect of the other tax.
 - (3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
 - (4) Consequential adjustments may be made—
 - (a) in respect of any period,
 - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
 - (c) despite any time limit imposed by or under any enactment.

Exception for returns from certain shares

- 381E) This Chapter does not apply in relation to an arrangement that produces a return for a person, in relation to an amount, which is economically equivalent to interest where—
- (a) the arrangement involves only excluded shares, and
 - (b) no relevant arrangement has been made (by any person) in relation to those excluded shares.
- (2) For the purposes of this section shares are excluded shares if they are admitted to trading on a regulated market and—
- (a) they were issued before 6 April 2013, or
 - (b) if issued on or after that date, at the time of issue no arrangements involving only the shares would produce a return, in relation to an amount, which is economically equivalent to interest.

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- (3) In subsection (2) “regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).
- (4) For the purposes of this section an arrangement is relevant, in relation to excluded shares, where—
- (a) the arrangement is made on or after 6 April 2013, and
 - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the arrangement is to secure that arrangements involving only the shares produce a return, in relation to an amount, which is economically equivalent to interest.”

Consequential amendments

- 4 The following amendments are in consequence of the amendments made by paragraphs 2(a) and 3.

TCGA 1992

- 5 TCGA 1992 is amended as follows.
- 6 In section 37 (consideration chargeable to tax on income), after subsection (2) insert—
- “(2A) Subsection (1) is not to be taken as excluding from the consideration so taken into account any money or money's worth which is, or is taken into account in computing, a return on which income tax is charged under Chapter 2A of Part 4 of ITTOIA 2005 (disguised interest) (but see section 381D of that Act).”
- 7 In section 39 (exclusion of expenditure by reference to tax on income), after subsection (3) insert—
- “(3A) This section is not to be taken as excluding, from the sums allowable under section 38 as a deduction in the computation of the gain, expenditure allowable as a deduction in computing a return on which income tax is charged under Chapter 2A of Part 4 of ITTOIA 2005 (disguised interest) (but see section 381D of that Act).”
- 8 Omit sections 148A to 148C (provision dealing with the capital gains tax consequences of Chapter 12 of Part 4 of ITTOIA 2005).
- 9 (1) Section 263A (agreements for sale and repurchase of securities) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) For the purposes of this section there is a repo in respect of securities if—
- (a) a person (“the original owner”) has agreed to sell the securities to another person (“the interim holder”), and
 - (b) the original owner or a person connected with the original owner—
 - (i) is required to buy back the securities by the agreement or a related agreement,

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- (ii) is required to buy back the securities as a result of the exercise of an option acquired under the agreement or a related agreement, or
 - (iii) exercises an option to buy back the securities which was acquired under the agreement or a related agreement.”
- (3) In subsection (1), for the words from “falling” to “repos)” substitute “ where under a repo in respect of securities the original owner has transferred the securities to the interim holder ”.
- (4) Omit subsection (5).
- 10 After section 263A insert—

“263AA Section 263A: interpretation

- (1) Subsections (2) to (7) apply for the purposes of section 263A.
- (2) References to buying back securities include references to—
 - (a) buying similar securities, and
 - (b) in the case of a person connected with the person who is the original owner under the repo, buying the securities sold by the original owner or similar securities.
- (3) Subsection (2) applies even if the person buying the securities has not held them before.
- (4) References to repurchase or a repurchaser are to be read accordingly.
- (5) For the purposes of subsection (2) securities are similar if they give their holders—
 - (a) the same rights against the same persons as to capital and distributions, interest and dividends, and
 - (b) the same remedies to enforce those rights.
- (6) Subsection (5) applies even if there is a difference in—
 - (a) the total nominal amounts of the securities,
 - (b) the form in which they are held, or
 - (c) the manner in which they can be transferred.
- (7) Agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (8) In section 263A and this section “securities” means—
 - (a) shares in a company wherever resident,
 - (b) loan stock or other securities of—
 - (i) the government of the United Kingdom,
 - (ii) a local authority in the United Kingdom,
 - (iii) another public authority in the United Kingdom,
 - (iv) a company resident in the United Kingdom or other body resident in the United Kingdom, or
 - (c) shares, loan stock, stock or other securities issued by—

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- (i) a government, local authority or other public authority of a territory outside the United Kingdom, or
 - (ii) another body of persons not resident in the United Kingdom.”
- 11 (1) Section 263F (power to modify repo provisions: non-standard repo cases) is amended as follows.
 - (2) In subsection (2), for the words from “cases” to the end substitute “ any case mentioned in section 263A(1). ”
 - (3) For subsection (9) substitute—
 - “(9) Post-agreement fluctuations” are fluctuations in the value of—
 - (a) securities transferred in pursuance of the original sale, or
 - (b) representative securities,which occur in the period after the making of the agreement for the original sale.
 - (10) “Representative securities” are securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale.”
- 12 In section 263G (power to modify repo provisions: redemption arrangements)—
 - (a) in subsection (2), for the words from “cases” to the end substitute “ any case mentioned in section 263A(1). ”, and
 - (b) omit subsection (4).

ITTOIA 2005

- 13 (1) ITTOIA 2005 is amended as follows.
 - (2) Omit Chapter 12 of Part 4 (disposals of futures and options involving guaranteed returns).
 - (3) In section 687(2) (application of charge to tax), at the end insert “ or to income falling within Chapter 2A of Part 4 ”.
 - (4) In Schedule 1 (consequential amendments), omit paragraph 435.
 - (5) In Schedule 2 (transitionals and savings), omit paragraph 95.
 - (6) In Schedule 4 (abbreviations and defined expressions), omit the entry for “future (in Chapter 12 of Part 4)”.

FA 2007

- 14 In Schedule 14 of FA 2007 (sale and repurchase of securities: minor and consequential amendments), omit paragraphs 22 and 23.

ITA 2007

- 15 (1) ITA 2007 is amended as follows.
 - (2) Omit the following provisions (which deal with deemed manufactured payments and repos)—

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- (a) section 596(5),
 - (b) sections 597 to 605,
 - (c) section 606(1) to (7) and (9) and (10), and
 - (d) sections 607 to 614.
- (3) In Schedule 1 (minor and consequential amendments), omit paragraphs 310, 543 and 544.
- (4) In Schedule 2 (transitionals and savings), omit paragraphs 112 to 124.
- (5) In Schedule 4 (index of defined expressions)—
- (a) omit the entries for—
 - “company UK REIT (in Chapter 4 of Part 11)”,
 - “distribution (in Chapter 4 of Part 11)”,
 - “gross amount (in Chapter 4 of Part 11)”,
 - “group (in Chapter 4 of Part 11)”,
 - “group UK REIT (in Chapter 4 of Part 11)”,
 - “Manufactured dividend (in Chapter 4 of Part 11)”,
 - “principal company (in Chapter 4 of Part 11)”,
 - “property rental business (in Chapter 4 of Part 11)”, and
 - ““the repurchase price of the securities (in Chapter 4 of Part 11)”,
 - and
 - (b) in the entry for “distribution (except in Chapter 4 of Part 11)”, omit “(except in Chapter 4 of Part 11)”.

CTA 2010

- 16 In Schedule 1 of CTA 2010 (minor and consequential amendments), omit paragraphs 540 to 543 and 544(a), (c) and (d).

FA 2010

- 17 In Schedule 6 of FA 2010 (charities etc), omit paragraph 21(4).

Commencement and transitional provision

- 18 (1) Subject to sub-paragraph (2), the amendments made by this Schedule have effect for the tax year 2013-2014 and subsequent tax years.
- (2) Chapter 2A of Part 4 of ITTOIA 2005 does not apply in relation to an arrangement that produces a return for a person, in relation to an amount, which is economically equivalent to interest if—
- (a) the person became party to the arrangement before 6 April 2013, and
 - (b) none of the provisions repealed by paragraphs 13(2) and 15(2) applied in relation to the arrangement before that date.

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