

EXPLANATORY NOTE

**CLAUSE 32 SCHEDULE 13: STOCK LENDING: INSOLVENCY ETC.
OF BORROWER: CHARGEABLE GAINS**

AMENDMENTS 90 & 91

SUMMARY

1. These amendments ensure that capital losses resulting from the insolvency of a borrower under a stock lending scheme cannot also be allowed as a deduction in arriving at trading profits.

DETAILS OF THE AMENDMENTS

2. Amendment 90 amends subsection (7) of section 263CA, which paragraph 3 of Schedule 13 to the Finance Bill inserts in the Taxation of Chargeable Gains Act 1992 (“TCGA”), by adding a cross-reference to subsection (5). This makes it clear that the reference in subsection (7) to securities that are treated as being disposed of by the lender under a stock ending scheme is to securities so treated under subsection (5).
3. Amendment 91 amends subsection (8) of section 263CA TCGA. This subsection provides that a debt due from the borrower under a stock lending arrangement to the lender, which arises as a result of the borrower’s insolvency, is not to be within the corporation tax loan relationship rules. This prevents a deduction from income if the debt is bad.
4. The original draft defined the debt in question by reference to a formula, which did not quite achieve the correct result. As the debt in question is described in subsection (7), the amendment replaces the incorrect formula with a cross-reference to subsection (7).

BACKGROUND NOTE

5. Clause 32 and Schedule 13 together insert a new section 263CA in the TCGA. This section provides rules that prevent a charge to tax in respect of capital gains arising to the lender under a stock lending arrangement in certain circumstances. These are that the borrower becomes insolvent and therefore cannot return the borrowed securities, and there is collateral which is used to replace all or some of those securities. To the extent that collateral is used to replace the borrowed securities, the changes made by the Schedule prevent the charge to tax on the lender that would otherwise arise.

RESOLUTION 24

6. If the collateral is not sufficient to replace all of the borrowed securities, the lender is treated as having disposed of the securities that are not replaced, but for no consideration. This results in an immediate capital loss that can be deducted from any other chargeable gains arising to the lender.
7. The insufficiency of the collateral also results in a debt being owed by the borrower to the lender, of an amount equal to the value of the securities that cannot be replaced by the collateral. Because of the borrower's insolvency, it is unlikely that the lender will receive any payment. But if any payment is received, subsection (7) of the new section 263CA TCGA has the effect the payment is treated as a chargeable gain arising to the lender at the time it is received.
8. There are a limited number of circumstances where it might be possible for a company that is the lender to obtain a deduction, in computing trading profits, for the bad debt owing by the borrower, while also benefiting from a capital loss on the deemed disposal of the securities that could not be replaced by the use of collateral. This situation could not arise for most trading companies. However, for life insurance companies, the rules for computing profits might give this outcome.
9. Subsection (8) of section 263CA TCGA prevents such a borrower benefiting from both a reduction of trading profits as a result of the debt being bad and a capital loss. It does this by providing that the debt owed by the borrower to the lender is outside the corporation tax loan relationship rules, thus preventing any deduction for a bad debt.
10. As drafted, subsection (8) defined the debt that was to be outside the loan relationship rules by means of a formula, which does not give the desired outcome. Amendment 91 replaces the formula with a cross-reference to the description in subsection (7) of the debt in question.

RESOLUTION 24

Mr Stephen Timms

90

Schedule 13, page 131, line 28, after ‘treated’ insert ‘under subsection (5)’.

Mr Stephen Timms

91

Schedule 13, page 131, leave out lines 30 to 34 and insert ‘The liability mentioned in subsection (7)’.