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(Brent South - Lab)

Amendment 303

Schedule 38, page 422, line 32, leave out from 'securities),' to the end of line 35 and insert—

'(b) in the case of that relationship the circumstances mentioned in section 730A(1)(b) of that Act are such as to give rise to a money debt, and

(c) the company stands, or has stood, in the position of a creditor or debtor as respects that money debt,'.

EXPLANATORY NOTE

SUMMARY

1. The purpose of the amendment is to remove the possibility of an unintended double charge to tax or an unintended double deduction. New rules introduced by Paragraph 10 of Schedule 38 to the Finance Bill ensure that exchange gains and losses arising on the original sale price in a sale and repurchase agreement (repo) are taxed and relieved in the most appropriate way, but they do not remove the possibility that they could also be taxed under other provisions. That possibility is now removed.

DETAILS

2. Paragraph 12 of Schedule 38 to the Finance Bill amends Section 100 Finance Act 1996 by introducing a new Section 100(2A) FA 1996 to prevent double counting regarding exchange gains and losses between Section 730BB ICTA 1988 and Section 100(2) FA 1996.

3. This amendment expands the coverage of section 100(2A) FA 1996 by including all cases where a repo might give rise to a money debt within section 100 FA 1996.

BACKGROUND NOTE

4. A sale and repurchase agreement (repo) involves the sale of securities with an agreement for the seller to buy back those securities at a later date at an agreed price. As such, repos can be equivalent to a secured loan, with the transferred securities as collateral and the difference between the sale and repurchase prices equivalent to loan interest. Tax rules recognise this economic substance by taxing and relieving repos as secured loans.
5. It is quite possible for repos to be agreed in currencies other than a company's accounting currency, and as a result exchange differences can arise during the repo period. If the repo price differential were computed as simply the difference between the sale and repurchase prices in the accounting currency the outcome could be heavily influenced by exchange movements. This could in turn trigger tax rules whereby interest payments regarded as being at an excessive rate are treated as distributions, so that the payer cannot deduct them for tax purposes.
6. This would be the wrong outcome, so Paragraph 10 of Schedule 38 to the 2003 Finance Bill introduces a comprehensive scheme to tax and relieve exchange gains and losses in a repo as section 730BB ICTA 1988. The intention is that amounts taken into account under these new rules should not be taken into account under other provisions.
7. However, the legislation does not necessarily achieve this in every case. Section 100(2) Finance Act 1996 brings into account exchange gains and losses in respect of money debts that do not fall into the general definition of a loan relationship in section 81 FA 1996. The type of money debt envisaged as falling within section 100 includes late payments of trading invoices, late payment of court judgements, and other similar situations where there is not a loan of money intended at the outset.
8. A repo could fall within the definition in section 100, and could therefore be subject to its provisions. These include, at section 100(2), the tax treatment of exchange gains and losses arising on a

money debt within section 100. Paragraph 12 of Schedule 38 therefore introduces section 100(2A) FA 1996 to ensure that where section 730BB applies, any exchange gains and losses in respect of the same amounts will not also fall within section 100(2) FA 1996.

9. However, section 100(2A) as originally drafted only covers situations where the original owner is committed to repurchase the securities from the outset, or where he becomes committed on the exercise of a "put" option by the interim holder. This leaves open the question of whether or when a money debt can arise if the original holder has, and exercises, a "call" option to repurchase the securities.
10. This amendment deals with the point by making it clear that wherever a repo gives rise to a money debt that may fall within section 100 FA 1996, any exchange gains or losses in respect of the original sale price of the securities will fall to be taxed or relieved only under section 730BB ICTA 1988.