

**HM REVENUE AND CUSTOMS
RESOLUTIONS 11 and 14-20**

**FINANCE BILL 2005
COMMITTEE
CLAUSE 39
SCHEDULE 7**

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(Bristol South - Lab)

Amendment 90

Schedule 7, page 100, line 17, at end insert—

‘(1A) But Condition 3 is not satisfied if—

(a) Condition 1 in section 91C above is satisfied as respects the share or would, apart from subsection (1A) of that section (income producing assets), be so satisfied, or

(b) Condition 2 in section 91D above is satisfied as respects the share or would, apart from subsection (1)(c) of that section (excepted shares), be so satisfied.’

SUMMARY

1. This amendment clarifies the law to ensure that Condition 3 (in section 91E Finance Act (“FA”) 1996), relating to a share and one or more associated transactions, does not apply if the share by itself would be within either Condition 1 or 2, or would be within either of those Conditions but for falling within the exemptions from those Conditions.
2. This will ensure that Condition 3 will not override the filters built into Conditions 1 and 2.

DETAILS

3. The amendment inserts a new subsection (1A) into section 91E Finance Act 1996 (itself inserted by paragraph 10 of Schedule 7 to the Finance Bill). Section 91E sets out Condition 3 which if met means that section 91B applies to treat the share as a creditor loan relationship (debt asset).
4. Paragraph (a) of the new subsection provides that Condition 3 does not apply to a share if Condition 1 in section 91C applies, or would

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apply apart from subsection (1A) of that section (because the issuing company's assets are income producing).

5. Paragraph (b) of the new subsection provides that Condition 3 does not apply to a share if Condition 2 in section 91D applies, or would apply apart from subsection (1)(c) of that section (excepted shares).
6. After the amendments are made, section 91E will read as follows—

“91E Condition 3 for section 91B(6)(b)

(1) Condition 3 is that there is a scheme or arrangement under which the share and one or more associated transactions are together designed to produce a return which equates, in substance, to the return on an investment of money at a commercial rate of interest.

(2) But Condition 3 is not satisfied if—

(a) Condition 1 in section 91C above is satisfied or would, apart from subsection (3) of that section (income producing assets), be satisfied, or

(b) Condition 2 in section 91D above is satisfied or would, apart from subsection (1)(c) of that section (excepted shares), be satisfied.

(3) In this section “associated transaction” includes entering into, or acquiring rights or liabilities under, any of the following—

- (a) a derivative contract;
- (b) a contract that would be a derivative contract, apart from paragraph 4(2B) of Schedule 26 to the Finance Act 2002 (trades etc: hedging relationships with shares);
- (c) a contract having a similar effect to—
 - (i) a derivative contract, or
 - (ii) a contract falling within paragraph (b) above;
- (d) a contract of insurance or indemnity.

(4) This section is to be construed as one with section 91B above.”

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BACKGROUND NOTE

7. Schedule 7 to the Finance Bill 2005 introduces anti-avoidance rules (at paragraph 10) which treat certain shares as creditor loan relationships (debt assets) where they give an interest-like return. The purpose of the rules is to prevent companies converting what would otherwise be interest income into a capital gain, exempt dividends or tax nothings. Section 91B treats certain shares as creditor loan relationships where one of three Conditions are met.
8. Condition 3 applies where there is a scheme or arrangement under which a share and one or more associated transactions are together designed to produce an interest-like return.