

**BOARD OF INLAND REVENUE  
RESOLUTION 50**

**FINANCE BILL 2003  
COMMITTEE  
SCHEDULE 38**

Amendment	Page	Line
*SC 301	420	1
*SC 302	421	29

Paul Boateng

(Brent South - Lab)

**Amendments 301 and 302**

Schedule **38**, page **420**, line **1**, at end insert—

'9B (1) Section 730A of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities) is amended as follows.

(2) In subsection (4) (adjustment of repurchase price) for "this section and sections 737A and 737C" substitute "the excepted provisions specified in subsection (4A) below".

(3) At the end of that subsection add as a second sentence—

"This subsection is subject to subsection (4B) below."

(4) After that subsection insert—

"(4A) The excepted provisions are—

- (a) this section,
- (b) section 730BB, apart from subsection (6A),
- (c) section 737A, and
- (d) section 737C.

(4B) Where section 730BB(6A) has effect (repurchase price to be treated as increased or reduced for certain purposes), subsection (4) above does not have effect for any purpose other than that of determining the amount that falls to be increased or reduced under section 730BB(6A).".'

Schedule **38**, page **421**, line **29**, at end insert—

'(6A) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 730A, 737A and

737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act —

(a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and

(b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.'

## **EXPLANATORY NOTE**

### **SUMMARY**

1. These amendments together ensure that new provisions for sale and repurchase agreements (repo) introduced in the Finance Bill link correctly to existing tax rules to give the correct value of the repurchase price in a repo for other tax purposes, including chargeable gains. Where there is both a repo price differential, deemed to be a payment of interest for tax purposes, and an exchange gain or loss on the original sale price in a repo, the repurchase price will be adjusted for both amounts. This will make sure that those amounts are not taken into account again for tax under other provisions.

### **DETAILS**

2. Amendment 301 inserts Paragraph 9B to Schedule 38 of the Finance Bill.
3. Paragraph 9B(1) is introductory.
4. Paragraph 9B(2) amends section 730A(4) ICTA 1988 to expand the range of other tax provisions which are not affected by section 730A(4) ICTA 1988.

5. Paragraph 9B(3) makes section 730A(4) ICTA 1988 subject to a new subsection (4B).
6. Paragraph 9B(4) adds subsection (4A) to section 730A ICTA 1988. This new subsection specifies which other tax provisions are not affected by section 730A(4) ICTA 1988.
7. Paragraph 9B(4) also inserts a new subsection (4B) into section 730A ICTA 1988. This new subsection makes clear that where there is an adjustment to be made to the repurchase price to take account of an amount under section 730BB, then the repurchase price adjusted solely by section 730A(4) does not have effect for any other tax provisions. Instead the repurchase price adjusted by both section 730A(4) and a new section 730BB(6A) will have effect.
8. Amendment 302 amends Paragraph 10 of Schedule 38 to the Finance Bill by inserting an additional section 730BB(6A) ICTA 1988. This new subsection adjusts the repurchase price in a repo by the amount of any exchange gain or loss computed under section 730BB(4) or section 730BB(5) ICTA 1988, in addition to the adjustment made under section 730A(4) ICTA 1988.

### **BACKGROUND NOTE**

9. 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.
10. 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.

11. 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.
12. Once the price differential in a repo has been determined, the repurchase price is adjusted by section 730A(4) ICTA 1988 for all other purposes of the Taxes Acts, including chargeable gains, to the same amount as the sale price. The aim is to ensure that the price differential is taxed only under the repo rules and is not normally charged to tax by other provisions as well.
13. The addition of the new rules for exchange gains and losses in a repo means that a further adjustment is now needed to the repurchase price. This is because section 730A(4) only adjusts the repurchase price to the value of the sale price in the accounting currency as at the repurchase date. A further adjustment is needed to take into account the amount found under section 730BB, in order to make the repurchase price equal to the value of the sale price in the accounting currency at the date of the original sale. This will then give the correct base for other tax provisions, including chargeable gains.
14. The adjusted repurchase price derived solely from section 730A(4) only has effect for other tax purposes where section 730BB ICTA does not apply. In cases where section 730BB ICTA does apply, the repurchase price will be adjusted under both section 730A(4) ICTA 1988 and the new section 730BB(6A) ICTA 1988.
15. This is best illustrated by way of an example. A company accounts in sterling. It sells securities for \$900,000, with an agreement to buy them back for \$918,000 after six months. At the start of the transaction the exchange rate is £1=\$1.50 so the sterling value of the sale price is £600,000. At the repurchase date the exchange rate is £1=\$1.45. Therefore the sterling value of the original sale price is £621,000. The original owner has therefore made an exchange loss of £21,000 in respect of the original sale price.
16. The repurchase price in sterling is £633,000 so the price differential under the repo agreement is £12,000 (£633,000 minus £621,000). This amount will be taxed and relieved under section 730A(2) ICTA 1988.

17. The repurchase price is then adjusted from its starting point of £633,000. The first adjustment, under section 730A(4) ICTA 1988, reduces the repurchase price to £621,000. The second adjustment, under section 730BB(6A) ICTA 1988, further reduces it by £21,000 (the amount computed by section 730BB(4) or section 730BB(5) as appropriate) to £600,000 - the original sterling value of the sale price.