

**HM REVENUE AND CUSTOMS
RESOLUTIONS 11 & 14 to 20**

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

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Dawn Primarolo

(Bristol South - Lab)

Amendment 83

Schedule 7, page 98, line 30, leave out ‘subsection (4)’ and insert ‘subsections (4) and (4A)’.

Amendment 84

Schedule 7, page 98, line 40, at end insert—

‘(4A) But a share is not a qualifying publicly issued share for those purposes if the investing company’s purpose in acquiring the share is an unallowable purpose by virtue of subsection (8)(a) below.’.

Amendment 85

Schedule 7, page 99, line 5, leave out ‘of the investing company’.

Amendment 86

Schedule 7, page 99, line 17, leave out ‘of the investing company’.

Amendment 87

Schedule 7, page 99, line 25, leave out ‘except where the share is a qualifying publicly issued share,’.

Amendment 88

Schedule 7, page 99, line 33, leave out from ‘if’ to end of line 39 and insert ‘the investing company was an associated company of a bank (see subsection (10)) at the time when the investing company acquired the share, unless the investing company shows that—

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(a) immediately before that time, some or all of its business consisted in making and holding investments, and

(b) it acquired the share in the ordinary course of that business.’.

Amendment 89

Schedule 7, page 99, line 45, leave out from beginning to end of line 2 on page 100 and insert—

“‘bank” has the meaning given by section 840A of the Taxes Act 1988;’.

EXPLANATORY NOTE

SUMMARY

1. These amendments modify the conditions that, if met, mean that a redeemable share is taxed as if it were a creditor loan relationship. Section 91D Finance Act 1996, inserted by paragraph 10 of Schedule 7 to the Bill, provides that redeemable shares that give an interest like return are charged to tax under section 91B FA 1996 unless they are “qualifying publicly issued shares” (QPIS), group mirroring shares or do not have an unallowable purpose.
2. In the Bill as published a company is treated as automatically having an unallowable purpose if the shares are held by an associate of a range of financial concerns. But that rule did not apply if the shares were QPIS.
3. The amendments ensure that the rule for associates of financial concerns is limited to banks; that that rule does not apply if the associate acquires the shares as part of a genuine investment

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business; and that the QPIS let out does not apply to associates of banks.

4. Two of them also remove some redundant words.

DETAILS

5. Amendment 84 inserts a new section 91D(4A) into FA 1996 which ensures that the qualifying publicly issued shares exclusion from the charge under section 91B on shares that act like debt does not apply where the company acquiring the shares has an unallowable purpose in so doing, where that purpose is the specific purpose of circumventing section 95 Income & Corporation Taxes Act 1988. Amendment 87 completes the picture by removing the QPIS let out in the unallowable purpose case by amending section 91D(8)(a). Amendment 83 anticipates Amendment 84 by including in section 91D(3)(a) a reference to a subsection (4A)
6. Amendments 85 and 86 remove redundant words “of the investing company” from section 91D(6)(c) and 91D(7)(b). They are redundant because company A and each of companies BB respectively are the investing company, so the provision asks if a company is connected with itself.
7. Amendment 88 recasts section 91D(9) so that for the automatic presumption of an unallowable purpose to be in point, the company must be an associate of a bank (which is given a definition by Amendment 89). References to building societies and other consumer credit concerns are omitted in the new subsection, and Amendment 89 removes the definitions of those concerns from section 91D(10).

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8. Amendment 88 also modifies what is meant by “circumventing section 95”. Now any shares falling within section 91D held by an associate of bank will be treated as circumventing the section unless they are held as part of an investment business. The definition here is such that it includes a company carrying on life assurance business.
9. After the amendments are made, section 91D will be as follows -
- “91D Condition 2 for section 91B(6)(b)*
- (1) Condition 2 is that the share—
- (a) is redeemable (see subsection (2)),
 - (b) is designed to produce a return which equates, in substance, to the return on an investment of money at a commercial rate of interest, and
 - (c) is not an excepted share (see subsection (3)).
- (2) For the purposes of this section, a share is to be regarded as redeemable only if it is redeemable as a result of its terms of issue (or any collateral agreements, arrangements or understandings)—
- (a) requiring redemption,
 - (b) entitling the holder to require redemption, or
 - (c) entitling the issuer to redeem.
- (3) A share is an “excepted share” for the purposes of this section if—
- (a) it is a qualifying publicly issued share (see subsections (4) **and (4A)**),
 - (b) it is a share that mirrors a public issue (see subsections (6) to (8)), or

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(c) the investing company's purpose in acquiring the share is not an unallowable purpose (see subsection (9)).

(4) A share is a "qualifying publicly issued share" for the purposes of this section if—

(a) it was issued by a company as part of an issue of shares to independent persons, and

(b) less than 10% of the shares in that issue are held by the investing company or persons connected with it,

(4A) But a share is not a qualifying publicly issued share for those purposes if the investing company's purpose in acquiring the share is an unallowable purpose by virtue of subsection (8)(a) below.

(5) The cases where a share mirrors a public issue are those set out in subsections (7) and (8) below.

(6) Case 1 is where—

(a) a company (company A) issues shares (the public issue) to independent persons,

(b) within 24 hours of that issue, one or more other companies (companies BB) issue shares (the mirroring shares) to company A on the same, or substantially the same, terms as the public issue,

(c) company A and companies BB are associated companies [..] (see subsection (10)), and

(d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue,

and in any such case the mirroring shares are shares that mirror a public issue.

(7) Case 2 is where, in the circumstances of Case 1,—

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(a) within 24 hours of the public issue, one or more other companies (companies CC) issue shares (the second-level mirroring shares) to one or more of companies BB on the same, or substantially the same, terms as the public issue,

(b) company A, companies BB and companies CC are associated companies [...], and

(c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue,

and in any such case the second-level mirroring shares are also shares that mirror a public issue.

(8) For the purposes of this section, a share is acquired by the investing company for an unallowable purpose if the purpose, or one of the main purposes, for which the company holds the share is—

(a) [...] the purpose of circumventing section 95 of the Taxes Act 1988 (see subsection (10)), or

(b) any other purpose which is a tax avoidance purpose (see subsection (11)).

(9) The purpose, or one of the main purposes, for which the investing company holds a share shall, in particular, be taken to be the purpose of circumventing section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) if the investing company was an associated company of a bank (see subsection (10)) at the time when the investing company acquired the share, unless the investing company shows that—

(a) immediately before that time, some or all of the investing company's business consisted in making and holding investments, and

(b) it acquired the share in the ordinary course of that business.

(10) In this section—

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“associated company”, in relation to any other company, means a company which, within the meaning given by section 413(3)(a) of the Taxes Act 1988, is a member of the same group of companies as that other company;

“bank” has the meaning given by section 840A of the Taxes Act 1988;

[.....]

“independent person”, in relation to a company, means a person who is not connected with the company;

“tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988;

“tax avoidance purpose”, in the case of any company, means any purpose that consists in securing a tax advantage (whether for the company or any other person).

(11) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this section.

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

BACKGROUND NOTE

10. 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.
11. Section 91B treats certain shares as creditor loan relationships (debt assets) where one of three Conditions are met. Condition 2,

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set out in section 91D, applies where the shares are redeemable and give an interest like return. But there are exclusions from the scope of the section.