

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

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

Amendment	Page	Line
*SC 80	97	43
*SC 81	97	45
*SC 82	98	4

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(Bristol South - Lab)

**Amendment 80**

Schedule 7, page 97, line 43, at end insert—

‘(aa) any share as respects which Condition 1 above is satisfied or would, apart from subsection (1A) above, be satisfied;’.

**Amendment 81**

Schedule 7, page 97, line 45, at end insert ‘or would, apart from subsection (1)(c) of that section (excepted shares), be satisfied’.

**Amendment 82**

Schedule 7, page 98, line 4, at end insert—

‘(e) rights under a repo in relation to which section 730A of the Taxes Act 1988 applies;

(f) any share in a company the whole or substantially the whole by fair value of whose assets are assets within paragraphs (a) to (e) above.’.

**EXPLANATORY NOTE**

**SUMMARY**

1. These three amendments add to the categories of “income producing assets” for the purposes of determining whether a share comes within Condition 1 of the rules inserted by paragraph 10 of Schedule 7 to the Bill. This rule, in new section 91B Finance Act (“FA”) 1996 treats certain shares as loan relationships (debt assets) for tax purposes.

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2. The main effect of these changes is to prevent inadvertent charges arising where shares in a group company are held via a chain of other group companies.

**DETAILS**

3. Amendment 80 inserts a new paragraph (aa) into section 91C(2) Finance Act (“FA”) 1996 (itself inserted by paragraph 10 of Schedule 7 to the Finance Bill). The new paragraph adds shares which themselves fall within section 91C (Condition 1) to the list of “income producing” assets. Section 91C does not apply, if it otherwise would, where a company’s assets consist wholly or nearly entirely of income producing assets. The new paragraph also includes shares that would be within Condition 1 but for the fact that the whole or substantially the whole of the issuing company’s assets are themselves income producing.
4. Amendment 81 expands section 91C(2)(b) which treats shares which satisfy Condition 2 (in the new section 91D FA 1996) as income producing assets. It adds to the list of income producing assets shares which would be within Condition 2 but for the fact that they are ‘excepted’ shares’, for example certain shares issued to the public and held by a person with less than 10% of the issue.
5. Amendment 82 adds two further categories to the list of income producing assets in section 91C(2) FA 1996. The first, in new section 91C(2)(e) FA 1996, are rights under a repo to which section 730A Income and Corporation Taxes Act 1988 applies. The second, in new section 91C(2)(f), is any share in a company the whole or substantially the whole by fair value of whose assets are themselves income producing assets.
6. Amendments 80 and 82 ensure that where there is a charge under section 91B in respect of the shares of a company at the bottom of a chain of group companies, there is no multiplication of that charge in tiers higher up the chain. It also ensures that where there is no charge because the shares in the bottom company fall within

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one of the exceptions, there is no inadvertent charge in tiers higher up the chain.

**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.
8. Section 91B treats certain shares as creditor loan relationships (debt assets) where one of three Conditions are met. Condition 1, set out in section 91C, applies where the assets of a company are not income producing but are such that the fair value of its shares is likely to increase at a rate which represents a return on an investment of money at a commercial rate of interest. “Income producing assets” are assets which give an interest type of return, as well as shares which themselves are caught by section 91A or section 91B.
9. Where a share is designed to give an interest-like return (such as a fixed rate redeemable preference share), there are exceptions for publicly issued shares, shares within a group which mirror such public issues, and for shares which are not held for a tax avoidance purpose.