HMRC - CFM39020 - Artificial Payments Of Interest

Artificial payments of interest

What is now CTA09/S443 was introduced as FA76/S38 to counter schemes to exploit the provisions allowing relief for interest paid, and then became ICTA88/S787. It provides that no tax relief is to be given for artificial payments of interest. Some schemes were successfully challenged by the Inland Revenue under the pre-existing statute and case law (see for example Cairns v MacDiarmid 56TC556) but FA76/S38 was enacted to put the matter beyond doubt. It only applies to cases involving ‘true interest’.

The legislation does not deny relief to those paying true interest for genuine business purposes where it is statutorily due. It should usually only be invoked where substantial sums of money are involved. Advice on the application of this section should be sought from Anti Avoidance Group.

CFM39030 explains that the rule only applies where the ‘sole or main benefit’ of the scheme is to reduce the tax liability.

Contrived and artificial payments may also be denied on other grounds, for example, the unallowable purposes rules at CTA09/S441-442 may also apply (CFM38100), or the sum claimed may not be true interest (see SAIM2000), or may be counteracted by the application of the Ramsay doctrine.

CTA09/S443 applies to all loan relationship debits in respect of interest, including payments of profit share return or alternative finance return under alternative finance arrangements - see CFM43000. It also applies for income tax purposes to interest paid by non-corporates.

For an example of the circumstances in which CTA09/S443 might apply see Lancaster v CIR SpC 232.

Previous page

Next page