HMRC - CTM48915 - Introduction & The Loan Creditor Condition

This condition restricts the way in which a tax elected fund (TEF) can borrow money. The purpose is to prevent income or capital growth being extracted from the TEF via a profit-related loan. The TEF will be in breach of this condition if it is the debtor in a loan which is not a normal commercial loan.

The wording in the legislation is similar to the definition of ‘normal commercial loan’ in ICTA88/SCH18/PARA1 (5). For guidance on interpretation of ‘normal commercial loan’ as defined in ICTA88/SCH18, see CTM81010 and CTM81020.

Regulation 69Z47 SI2006/964 determines that the TEF must fulfil the following conditions throughout the accounting period for any loan relationship to which the fund is party as a debtor:

Condition A

The creditor is not entitled to a payment by way of interest which is dependent upon the results of all or part of the TEF’s business or the value of its assets. For the purposes of this condition a loan shall not be treated as dependent upon the results of the TEF’s business by reason only that the terms of the loan provide for the interest to be reduced if results improve or increased if results deteriorate.

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Condition B

The creditor is not entitled to a payment by way of interest which exceeds a reasonable commercial return.

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Condition C

The creditor is entitled on repayment to an amount which does not exceed the consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of the issue of securities listed on a recognised stock exchange.

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