

Interest payments: arrangements appearing very likely to produce post-tax advantage

- 1 (1) In section 384 of ITA 2007 (general restrictions on relief for interest payments), after subsection (1) insert—
- “(1A) Relief is not to be given under this Chapter for interest paid by a person on a loan if the loan is made to the person (“the borrower”) as part of arrangements which appear very likely to produce a post-tax advantage.
- (1B) Arrangements “appear very likely” to produce a post-tax advantage if (and only if) it would be reasonable to assume from either or both of—
- (a) the likely effect of the arrangements, and
 - (b) the circumstances in which the arrangements, or any parts of the arrangements, are entered into or effected,
- that there is no risk, or only an insignificant risk, that they will not produce a post-tax advantage.
- (1C) “Produce a post-tax advantage” means give rise to a sum or sums—
- (a) payable to the borrower or a person connected with the borrower, or
 - (b) payable to any other person for the benefit of the borrower or a person connected with the borrower,
- of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is equal to or greater than the amount required to meet the borrower’s obligations in respect of the loan.
- (1D) If, with a view to securing that subsection (1A) does not apply, the arrangements make provision for securing that, in all or any circumstances in which they do not produce a post-tax advantage, they will produce a broadly compensatory amount, the arrangements are to be regarded for the purposes of subsection (1B) as making provision for securing the production of a post-tax advantage in those circumstances.
- (1E) “Produce a broadly compensatory amount” means give rise to a sum or sums payable as mentioned in subsection (1C) of an amount (or aggregate amount) which, after making the appropriate tax adjustments, is not significantly less than the amount required to meet the borrower’s obligations in respect of the loan.
- (1F) For the purposes of subsections (1C) and (1E) causing the value of an asset to be obtainable, directly or indirectly, by a person is to be treated as equivalent to giving rise to a sum payable to the person of an amount equal to that value.

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- (1G) To make the appropriate tax adjustments for the purpose of subsection (1C) or (1E) –
- (a) if A exceeds B, deduct the amount of the excess from the amount (or aggregate amount), and
 - (b) if B exceeds A, add the amount of the excess to the amount (or aggregate amount).
- (1H) For the purposes of subsection (1G) –
- A is the aggregate amount of any income tax, capital gains tax or tax under the law of a territory outside the United Kingdom to which the borrower is liable in consequence of the arrangements, and
 - B is the aggregate amount by which the borrower’s liability to income tax and capital gains tax is (or apart from subsection (1A) would be) reduced in consequence of the arrangements.
- (1I) In this section “arrangements” means arrangements consisting of any number of agreements, understandings, schemes, transactions or other arrangements (whether or not legally enforceable) and (except in subsections (1J) and (1K)) also includes any related transactions.
- (1J) In subsection (1I) “related transactions” means transactions in the case of which it is reasonable to assume from either or both of –
- (a) the likely effect of the transactions, and
 - (b) the circumstances in which the transactions are entered into or effected,
- that the transactions would not have been entered into or effected independently of the arrangements.
- (1K) Transactions are not prevented from being related transactions just because the transactions –
- (a) are not between the same parties, or
 - (b) are not between parties to the arrangements.”
- (2) The amendment made by sub-paragraph (1) has effect in relation to interest paid on or after 19 March 2009.