
DISGUISED INTEREST

Who is likely to be affected?

1. Large companies that enter into arrangements to avoid tax on returns from investments that are economically equivalent to interest.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 so that, subject to exceptions, returns from arrangements that produce amounts economically equivalent to interest will be treated in the same way as interest for the purposes of corporation tax (CT).

Operative date

3. The legislation will generally apply to arrangements to which a company becomes party to on or after 22 April 2009. But it will also apply to certain arrangements in place before that date that are within the scope of existing disguised interest legislation which is to be repealed.

Current law and proposed revisions

4. The current law contains a number of targeted anti-avoidance rules to ensure that amounts that are economically equivalent to interest are charged to CT in the same way as interest.
5. The new legislation is the result of consultation on the use of “principles-based drafting” to tackle avoidance involving disguised interest. It replaces a number of existing piecemeal responses to avoidance in this area with a comprehensive rule ensuring that a return equivalent to interest is charged to CT in all circumstances where it would not currently be taxed as income.

6. There are exclusions from the legislation where:
- the return arises to a company purely from an increase in the value of shares that it holds if those shares are in a company with which it is connected. For this purpose “connected” includes shares in certain joint venture companies; and
 - it is reasonable to assume that it is not a main purpose of the arrangements to secure that the return is not charged to tax as income.

Further advice

7. If you have any questions about this change, please contact Richard Rogers on 020 7147 2625 (email: richard.rogers@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk