Charges on income for corporation tax purposes

Part 08-02-01

This document should be read in conjunction with section 247 of the Taxes Consolidation Act 1997

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1. Executive Summary

This manual provides an overview of relief from corporation tax for charges on income. It sets out information in relation to:

1. What charges on income are and the conditions payments must meet to rank as charges on income in accordance with section 243 Taxes Consolidation Act, 1997 ("TCA 1997"). It also sets out how charges on income relating to a trade, relevant trading charges and non-relevant trading charges may be relieved from corporation tax (see Part 2 of this manual).
2. There is an exception to the general prohibition in section 243(7) that interest is not to be treated as a charge on income. In accordance with section 243(8), the general prohibition does not apply to interest paid on a loan which qualifies for relief under section 247 TCA 1997. Part 3 of the manual provides an overview of relief for interest available under section 247.
3. Miscellaneous matters relating to charges on income including, subject to exceptions, the obligation to withhold tax on the payment of interest to non-residents in accordance with section 246 TCA 1997 (see Part 4 of the manual).

2. Charges on income

2.1 Introduction

Section 243 TCA 1997 provides for the deduction of charges on income paid by a company against its total profits. The charges must be paid in the accounting period out of the profits brought into charge to corporation tax for that accounting period and are allowed against the total profits[1] as reduced by any other relief (for example, relief for losses) except group relief in accordance with section 420 TCA 1997.

Charges on income comprise the following types of payments, subject to the payments meeting certain conditions, as outlined in paragraph 2.1.1 below:

a) any yearly interest*;
b) annuity;
c) or such other annual payments;
d) any other payments mentioned in section 104 TCA 1997 (taxation of certain rents and other payments) or section 237(2) TCA 1997 (any royalty paid in respect of the user of a patent); and
e) other interest* paid in the State to recognised banks in the EU or the United Kingdom, stock exchange members and discount houses carrying on business in the EU or the United Kingdom.

[1] Refer to paragraph 2.3.2 of this manual for restrictions that apply on the use of relevant trading charges on income

***Interest is not to be treated as a charge on income except to the extent that it may be so treated by virtue of section 243(8). Refer to Part 3 below for further details**.

2.1.1 Conditions payments must meet to rank as a charge on income

To rank as a charge on income, a payment must satisfy the following conditions:

(a) it must not be a dividend or other distribution (243(1));

(b) it must not be deductible in computing profits or any description of profits (thus charges on income will not include, for example, interest which is allowable as a trading expense or in computing income under Case V of Schedule D; but will include patent royalties and certain mining and other rents (243(1));

(c) it must have been paid out of the company's profits brought into charge to corporation tax (this may be of importance in relation to non-resident companies (243(2) - refer to paragraph 4.4);

(d) it must not have been charged to capital and must have been ultimately borne by the company (243(6));

(e) it must be paid under a liability incurred for valuable and sufficient consideration (243(6)) **[see Ball v National and Grindlays Bank Ltd.,** 1971, 47 TC 287]. However, this does not apply in the case of certain covenanted payments, e.g. payments made to a body of persons promoting Human Rights (within the meaning of section 209 TCA 1997);

(f) if made by a company not resident in the State, it must have been incurred wholly and exclusively for the purposes of a trade carried on by the company in the State through a branch or agency (a non-resident company not carrying on such a trade would not be within the charge to corporation tax) (243(6));

(g) it must not come within "any other express exceptions" (243(1)). "Other express exceptions" is designed to take account of such provisions as section 846(2)(b) TCA 1997 which excludes from the definition of charges on income interest on money borrowed by a non-resident financial concern for the purchase of tax-free securities (within the meaning of section 845 TCA 1997).

In accordance with section 243(8) there are certain conditions that interest must meet in order to be treated as a charge on income. See Part 3 below for details of how interest may qualify as a charge on income.

2.2 Special provisions in relation to payments to non-residents (section 243(5))

Charges on income paid to non-residents are deductible from profits in the same way as if they were paid to a company resident in the State. However, a payment to a non-resident will not be treated as a charge on income unless:

(a) the paying company is entitled to deduct income tax from the payment and accounts for it to Revenue*, or

(b) the payment is payable out of income from foreign securities and possessions brought into the charge to tax under Case III of Schedule D, or

(c) the payment is one to which sections 238 TCA 1997 or 246(2) do not apply by virtue of section 242A TCA 1997 or section 267I TCA 1997.

*A company will be treated for the purposes of section 243(5)(a) as having deducted income tax from a payment to a non-resident and accounted for the tax and, therefore will not be denied a deduction from its profits, where the paying company has in fact been authorised by Revenue to make the payment without deduction of tax. Such authorisation could be granted by reference to a double taxation agreement.

A company will not be denied a deduction from its profits in cases where interest is paid without deduction of tax in the following circumstances:

- The interest is paid on an advance from a bank carrying on a bona fide banking business in the State (by virtue of section 246(3)(a));
- The interest is paid by a bank in the ordinary course of its business (by virtue of section 246(3)(b));
- The interest is paid in the ordinary course of a trade or business to a company resident in a relevant territory, being the EU or a country which Ireland has a double tax treaty, and the relevant territory imposes tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or the interest is exempted from income tax under a relevant double tax treaty, and in each case, provided the interest is not paid in connection with a trade or business carried on in the State through a branch or agency (section 246(3)(h) refers); or
- The interest is paid on quoted Eurobonds (by virtue of section 64(2) TCA 1997).

2.3 Trading charges and non-trading charges

2.3.1 Introduction

A distinction is drawn between payments that rank as relevant trading charges on income and those that rank as non-relevant trading charges on income. This distinction is important in relation to how relief from corporation tax is given in respect of the payments.

2.3.2 Relevant trading charges (section 243A)

The phrase "relevant trading charges on income" is defined in section 243A TCA 1997 and means charges on income which are paid wholly and exclusively for the purposes of a trade or profession (other than payments for the purposes of an excepted trade which is taxable at 25%). Relevant trading charges must be paid before relief is given. The most common trading charges are patent royalties.

Relevant trading charges i.e. charges on income incurred by a company in an activity which is taxable at the standard rate of corporation tax, do not qualify as a deduction in computing Case I or Case II profits by virtue of section 81(2)(l) TCA 1997 and must be added back in the Case I or Case II computation.

Relevant trading charges may be offset against income taxable at the standard rate of corporation tax. Where such charges incurred in an accounting period are being offset sideways in that accounting period, they may be offset only against income which is taxable at the standard rate. This may include:

- trading income taxable at the standard rate of corporation tax;
- foreign dividends taxable at the standard rate of corporation tax (section 21B TCA 1997); and
- income specified in section 21A(4) TCA 1997 (being certain life, non-life and reinsurance trades).

Relevant trading charges can only be offset against non-trading income on a "value basis" in accordance with section 243B TCA 1997 where the charges have not otherwise been relieved. This is done by reducing corporation tax due by the amount of the charges multiplied by the standard rate of corporation tax (currently 12.5%). The relief is given as a deduction from the company's corporation tax liability (rather than as a deduction from profits). Refer also to paragraph 4.2 of the manual.

2.3.3 Non-relevant trading charges

Non-relevant trading charges cover all other charges on income which are not incurred wholly and exclusively for the purposes of a trade, the profits of which are chargeable at the standard rate of corporation tax (other than an excepted trade or Case III foreign trade).

They are allowed as a deduction against total profits under section 243(2). Any non-trading charges not utilised in the accounting period cannot be carried forward and are effectively lost to the company. The exception to this is where the non-trading charges are paid by an "investment company" and the provisions of section 83 TCA 1997 apply in computing the company's taxable income. The most common non-trading charge is interest qualifying for relief under section 247. Refer to Part 3 of this manual for further details.

3. Interest as a charge on income (section 247 interest)

3.1 General

The prohibition under section 243(7) of the treatment of **interest as a charge** on income does not, by virtue of section 243(8), apply to any interest paid on a loan applied in acquiring a material interest in certain companies, mainly trading companies and companies whose income consists wholly or mainly of income chargeable under Case V of Schedule D in accordance with section 247 TCA 1997.

3.2 Qualifying purposes: acquisition of shares and on-lending

A qualifying loan for the purposes of section 247(2) is a loan to a company to defray monies applied:

(a) in **acquiring** ordinary shares in:

(i) a trading company;

(ii) a company whose income consists wholly or mainly from Irish rental profits;

(iii) a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities **directly** in such trading or rental companies; or

(iv) a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies (refer to paragraph 3.2.1 for details of what constitutes an intermediate holding company for these purposes).[2]

(b) in **lending** to a company referred to in (a) and the monies are used wholly and exclusively**:**

(i) in the case of a trading company, for the purposes of its trade;

(ii) in the case of a company whose income consists wholly or mainly of Irish rental profits, in the purchase, improvement or repair to premises to which the profits relate; or

(iii) in the case of a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities directly in such trading or rental companies, as the case may be, for the purposes of holding such stock, shares or securities directly in such trading or rental companies; or

[2] [3] [4]Applies to loans made on or after 19 October 2017.

(iv) in the case of a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies, for the purposes of acquiring and holding such stock, shares or securities in a trading company or trading companies indirectly through one or more intermediate holding companies[3]; or

(c) in **lending to** a company referred to in (i), (ii) or (iii) of paragraph (a) and the monies on-lent are used wholly and exclusively by a **company connected** with that company. Where that connected company is a trading company, rental company or a holding company that directly holds stocks, shares or securities in a trading company or rental company, as the case may be, the monies must be used by it wholly and exclusively for a relevant purpose as set out above in (i) to (iii) of paragraph (b); or

(d) in **lending to** a company whose business consists wholly or mainly of holding stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies (i.e. a company referred to in paragraph (a)(iv) above) and the monies are on-lent to, and used by, a **company connected** with that company. To meet the requirements of the legislation, the connected company must itself be a holding company that holds stocks, shares or securities directly or indirectly in a trading company and must use the monies on-lent wholly and exclusively for a qualifying purpose. Where the connected company is:

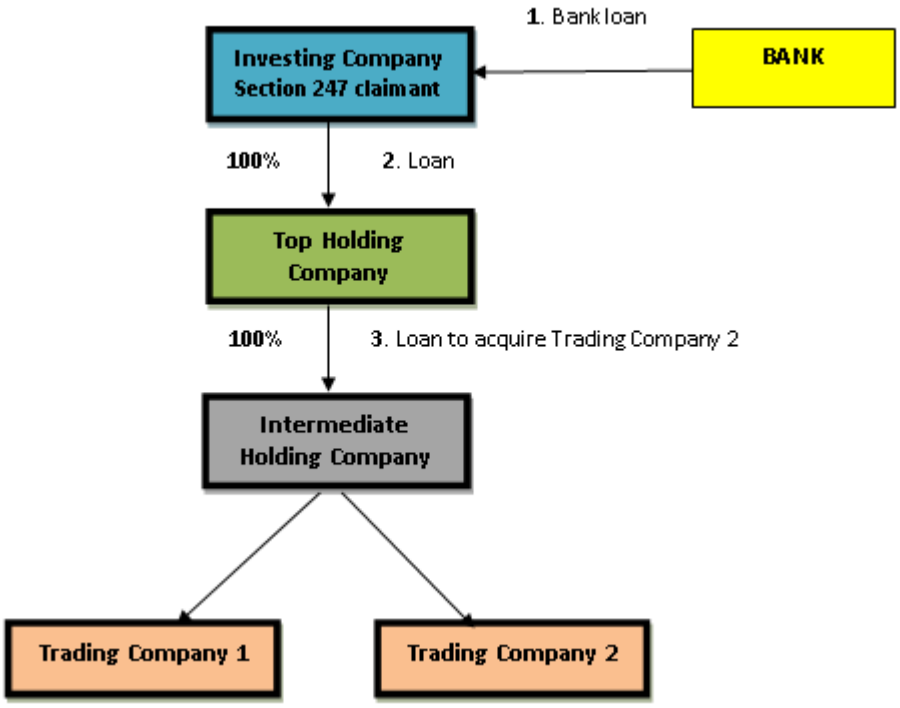
(i) a holding company that directly holds stocks, shares or securities in a trading company, the monies must be used by it wholly and exclusively for the purposes of acquiring and holding ordinary shares in a trading company; or

(ii) a holding company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies, the monies must be used by it wholly and exclusively for the purposes of acquiring and holding ordinary shares in a holding company that directly holds stocks, shares or securities in a trading company;[4]

(e) in paying off another loan which was applied in the acquisition of ordinary shares or in on-lending in the circumstances outlined above.

[4]Applies to loans made on or after 19 October 2017.

Example 3.2(1) – Monies on-lent to a holding company that holds shares indirectly in a trading company through an intermediate company and the monies are used by a connected company

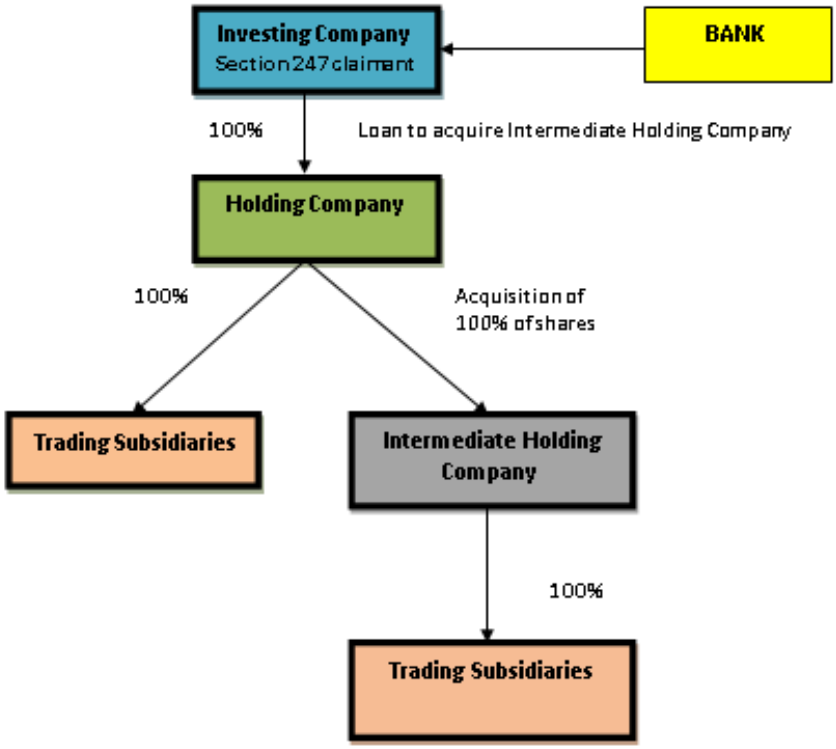


Example 3.2(1): Monies on-lent to a holding company

An investing company borrows money from a third-party bank and on-lends the monies to Top Holding Company, a holding company which holds shares in a trading company, Trading Company 1, through Intermediate Holding Company. Top Holding Company on-lends the monies to Intermediate Holding Company and it uses those monies to acquire and hold shares in another trading company, Trading Company 2. In these circumstances, the requirements of 3.2(d)(i) above would be met.

If, instead of on-lending the monies to Intermediate Holding Company directly, Top Holding Company on-lends the monies to another connected company, Company A and it in turn on-lends the monies to Intermediate Holding Company so that it can acquire the shares in Trading Company 2, the requirements of the legislation would not be met. This is because the connected company to which the monies are on-lent (Company A) has not used the monies to acquire and hold shares in either a trading company or a holding company that directly holds shares in a trading company.

Example 3.2(2) – Loan is made by an investing company to a holding company just before an acquisition of shares



Example 3.2(2): Loan is made by an investing company to a holding company

Investing Company borrows from a third-party bank and on-lends the monies to Holding Company so that it can acquire 100% of the shares of Intermediate Holding Company, being a holding company that directly holds shares in a number of trading companies.

At the time the loan is made by Investing Company to Holding Company, which is just before its acquisition of Intermediate Holding Company, Holding Company holds shares directly in trading subsidiaries and therefore is a holding company described in 3.2(a)(iii) rather than 3.2(a)(iv) above. The legislation requires (at section 247(2)(b)(iii) TCA 1997) that monies on-lent by an investing company to a holding company that **directly** holds stocks, shares or securities in a trading company (i.e. a holding company referred to in 3.2(a)(iii) above) is to be used wholly and exclusively by the holding company for the purposes of holding stocks, shares or securities directly in a trading company. However, in this example, the purpose of the loan is for Holding Company to acquire shares in trading companies **indirectly** through an intermediate holding company.

In these circumstances, provided the loan is made to Holding Company **just before** its acquisition of Intermediate Holding Company, Revenue will accept that the loan has been made by Investing Company to a holding company to which 3.2(a)(iv) above refers. The legislation requires (at section 247(2)(b)(iv) TCA 1997) that monies on-lent by an investing company to such a holding company are used by it wholly and exclusively for the purposes of acquiring and holding stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies. This will be satisfied by Holding Company on the facts in this example.

For these purposes, the reference to the making of a loan "just before" an acquisition of shares refers to a loan that is made immediately before the acquisition (and at least on the same day as the acquisition).

Revenue will also apply this interpretation in other circumstances involving a holding company. For example if, on the facts of Example 3.2(2), 'Holding Company' did not hold any shares prior to the acquisition of Intermediate Holding Company, but rather it was set up to acquire a trading group indirectly by acquiring shares in a holding company, Intermediate Holding Company in this example, Revenue would accept that it is a holding company to which 3.2(a)(iv) applies provided the loan is made to it by Investing Company **just before** its acquisition of shares in Intermediate Holding Company. Similarly, if 'Holding Company' was set up to acquire shares in a trading company directly, and the loan to effect the acquisition is made to it by Investing Company **just before** the acquisition, Revenue would accept that Holding Company is a holding company to which 3.2(a)(iii) above applies.

3.2.1 Holding of shares in a trading company indirectly through an intermediate holding company

Finance Act 2017 amended section 247 to provide for relief for interest on a loan used to acquire, or in certain circumstances lend to, a holding company that indirectly holds ordinary shares in a trading company through one or more intermediate holding companies (see paragraphs 3.2(a)(iv), (b)(iv) and (d) above). An intermediate holding company for these purposes (and for the purpose of section 249 TCA 1997) is a company whose business consists wholly or mainly of the holding of stocks, shares or securities and is, in relation to an investee company referred to in 3.2(a)(iv), a company through which it indirectly holds stocks, shares or securities in a trading company.

Paragraphs (a)(iv), (b)(iv) and (d) apply only to a holding company that holds stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies where it and each intermediate holding company exists for bona fide commercial reasons and not as part of a scheme or arrangement the purpose of which or one of the purposes of which is the avoidance of tax. Revenue considers that the criteria would be met where, for example, an intermediate holding company exists for valid commercial reasons and not merely to secure tax deductions for interest which is not included in taxable income.

In the case of a third-party acquisition of shares, satisfaction of the criteria can be considered by the acquirer group post acquisition.

3.2.2 Loan to an investing company applied in subscribing for share capital

Where the monies borrowed by an investing company are defrayed in subscribing for stocks, shares or securities of a company, section 247(2A) requires that the capital must be used wholly and exclusively either by that company or a company connected with that company for a relevant purpose, and that purpose depends on whether the relevant company that uses the capital is (a) a trading company, (b) a rental company, (c) a holding company that directly holds stocks, shares or securities in a trading or rental company, or (d) a holding company that holds stocks, shares or securities in a trading company indirectly through one or more intermediate companies. The required purposes of use for (a) to (c) are the same as those outlined in paragraph 3.2(b)(i) to (iii) above, as appropriate. Where the relevant company that uses the capital is a company whose business consists wholly or mainly of the holding of stocks, shares or securities in a trading company indirectly through one or more intermediate holding companies, the subscription monies must be used for the purposes of holding such stock, shares or securities. "Such stock, shares or securities" refers to shares either in a trading company or in an intermediate holding company.

3.2.3 Acquisition of ordinary shares by scheme of arrangement

With regard to paragraph (a) of 3.2 above, where ordinary shares in a company referred to in 3.2 (a) are acquired by a company through a court approved scheme of arrangement pursuant to Chapter 1 of Part 9 of the Companies Act 2014, it will not preclude satisfaction of the requirement that money is defrayed in the acquisition of ordinary share capital. Under such a scheme of arrangement, shares of existing shareholders are cancelled and ordinary shares are issued to the acquiring company from reserves created as a result of the share capital reduction, with consideration being payable by the acquiring company to 'shareholders' who have had their shares cancelled. [See also paragraph 3.6.3 below.]

3.3 "Wholly or mainly" test

Section 247 applies to a loan used to acquire shares of a company which exists "wholly or mainly" for trading purposes (section 247(2)(a)(i)) or of a company whose income consists wholly or mainly of profits or gains chargeable under Case V of Schedule D (section 247(2)(a)(ii)). In the case of an acquisition of a company that holds shares in a trading company, the business of the holding company must consist wholly or mainly of the direct holding of stocks, shares or securities of a trading company (section 247(2)(a)(iii)) or the indirect holding of such stocks, shares or securities through one or more intermediate holding companies (section 247(2)(a)(iv)). In the case of an acquisition of a company that holds shares in a rental company, the business of the holding company must consist wholly or mainly of the direct holding of such stocks, shares or securities (section 247(2)(a)(v)). For the purposes of section 247, Revenue views "wholly or mainly" as meaning greater than 50%.

3.4 Qualifying loan conditions

A loan will be a qualifying loan where the additional conditions specified under section 247(3) are satisfied. These conditions are as follows:

(a) When the interest is paid the investing company must have a material interest in the company or, where the borrowings to which the interest relate, are on-lent and used by a company connected with the latter company, in the company and that connected company. "Material interest" is defined in section 247(1) as the beneficial ownership of, or the ability to control, directly or indirectly, more than 5 per cent of the ordinary share capital of the company.

(b) During the period taken as a whole from the application of the loan to the time when the interest was paid, at least one director of the investing company must have been also a director of the company, or where the borrowings are on-lent and used by a connected company, in the company and the connected company.

(c) During the period taken as a whole referred to in (b) above, the investing company must not have recovered any capital, or must no be deemed to have recovered any capital, from the company or from a connected company, apart from any amount taken into account under section 249 TCA 1997 (refer to paragraph 3.11 below).

The conditions outlined at (a) to (c) above must be satisfied on an ongoing basis and throughout the term of the qualifying loan.

3.5 Use of the loan

The loan must be made in connection with the application of the money and must have been made either on the occasion of its application or within what is in the circumstances a reasonable time of draw-down, and the loan must not have been applied for some other purpose before being applied as described above. The placing on temporary deposit (for example, with a bank or building society) of sums of pre-determined amounts should not be regarded as an application of the loans for "some other purpose".

3.6 Restriction of relief: loan from a connected person (section 247(4A)(a))

Subject to certain exceptions (see paragraph. 3.6.2 below), interest relief will not be allowed in respect of a loan made to an investing company by a person that is connected with it, if the loan is used by the investing company to acquire the ordinary share capital of a company from a connected company. The ordinary share capital may be acquired by the investing company from the acquired company itself (where there is a share issue) or from another company and, in either case, the investing company will be regarded as being connected with the company from which the shares are acquired if it is connected with it at the time of acquiring the capital or immediately after that time.

A similar restriction of relief also applies where a loan from a person connected with the investing company is used by it to lend to another company, money which is used directly or indirectly to acquire any part of the share capital of a company from a company connected with the investing company (whether the connected company is the company acquired or another company).

3.6.1 Back-to-back loans

The restriction on relief cannot be avoided by way of back-to-back loan arrangements. Such arrangements arise where, for example, the investing company might borrow from a third party but where the third party received an equivalent funding from a company connected with the investing company. If there is such a back-to-back arrangement, the loan will be regarded as made to the investing company by a connected company (section 247(4A)(b)).

3.6.2 Exceptions to restriction

Section 247 provides for exceptions to the restriction of relief referred to in paragraph 3.6 including exceptions relating to issued share capital (explained in paragraph 3.6.2.1) and a relevant income exception (explained in paragraph 3.6.2.2 below).

3.6.2.1 Issued share capital exception

The restriction in paragraph 3.6 above will not apply if the following two conditions are met:

(i) the loan is used either to acquire share capital on its issue or to on-lend to another company to acquire such capital on its issue; and

(ii) the new share capital is issued for the purposes of increasing the capital available to the target company for use in its trade or business. However, the issue of the share capital must not be a part of any arrangement with the original lender or a person connected with the original lender to achieve, directly or indirectly, the effective repayment of the loan or the greater part of it (section 247(4A)(c)).

It is not presumed that an arrangement exists to achieve an effective repayment of the loan solely because the share capital is used in paying off directly or indirectly another loan to the original lender or a person connected with the original lender (section 247(4A)(h)). This, however, only applies where:

(i) the other loan was used wholly and exclusively for the purposes of a trade or business and was not itself part of a circularity arrangement, and

(ii) interest on the other loan would have been deductible if it was not paid off.

3.6.2.2 Relevant income exception

A further relaxation of the restriction referred to in paragraph 3.6 is provided for where there is certain matching interest or dividend income (which is referred to as "relevant income") arising directly or indirectly from the use of the loan. Relief is not denied in respect of so much of the interest on the section 247 loan as does not exceed the relevant income of the investing company, and where certain conditions are met (as noted below), the relevant income of companies connected with the investing company.

Relevant income may consist of interest or dividends that are chargeable to corporation tax at the investing company level. In the case of interest, such matching could arise where the loan is used directly by the investing company, or indirectly through another company or a series of companies. The type of interest that can be regarded as relevant income is interest that is not deductible in computing for corporation tax purposes income or profits of the investing company, or any company connected with it, and that is taken into account in computing income chargeable to corporation tax of the company that receives it. For dividends to be regarded as relevant income, the dividends must be chargeable to corporation tax in the State. A further requirement is that the interest or dividend income must be income that would not have arisen but for the direct or indirect use of the original loan (section 247(4A)(d)).

Where interest paid by the investing company on the section 247 loan (referred to as "relevant interest") exceeds the amount of the relevant income of the investing company for an accounting period, the excess can be set off against relevant income of companies connected with the investing company. In order for this to apply, the following conditions must be satisfied (section 247(4A)(e)):

(i) the relevant interest exceeds the relevant income of the investing company (excess relevant interest);

(ii) the excess relevant interest is not otherwise deductible;

(iii) the investing company and the connected company with relevant income must jointly make an election; and

(iv) the aggregate amount of relief for interest claimed against relevant income of all companies connected with the investing company cannot be greater than the amount of excess relevant interest.

Where the above conditions are satisfied and subject to the limitation set out below, relevant interest can be deducted from the total profits, reduced by any other relief from corporation tax, of the electing company.

The amount of the excess relevant interest that can be set off against the relevant income of the electing company is limited to the lower of:

(I) the proportion of relevant income of the electing company for so much of the accounting period of the electing company that is common to the accounting period of the investing company, and

(II) the relevant income of the company less any amount of losses set off against it under group relief or that could have been set off under section 396(2) TCA 1997.

Relevant interest paid by the investing company which has been relieved in accordance with this paragraph is deemed for the purposes of paragraph 4(5) of Schedule 24 to have been allocated by the company concerned to its relevant income in respect of which the relief for interest has been allowed. The foreign tax in respect of that relevant income is disregarded for the purposes of paragraph 9E (dividend pooling) and paragraph 9F (interest pooling) of Schedule 24.

3.6.2.2.1 Back-to-back loans (section 247(4A)(f))

Provision is made against the making of a back-to-back loan in order to avoid the restriction on offset against relevant income that applies where the interest concerned is deductible for tax purposes in computing income of the investing company or a company connected with it. The provision counters a situation where interest is routed through a third party so that the interest, which might qualify as relevant income, is not deductible in computing income of the investing company or a connected company. Where such a back-to-back loan arises, interest received from the third party, and which would otherwise qualify as relevant income, will be treated as interest which is deductible in computing income of the investing company or a company connected with it.

3.6.2.2.2 Exchange rate gains or losses (section 247(4A)(g))

Any gains or losses arising from exchange rate movements that relate to the relevant income, or to the underlying loans or investments, are to be taken into account in calculating the relevant income. Gains or losses on hedging contracts to protect against exposure to exchange rate or interest rate fluctuations are also to be taken into account in determining relevant income.

3.6.3 Issue of ordinary shares pursuant to a court approved scheme of arrangement

Under a court approved scheme of arrangement effected in accordance with Chapter 1 of Part 9 of the Companies Act 2014, shares are issued by a company (the target company) to the acquiring company and immediately afterwards the acquiring and target companies are connected companies. However, as regards an acquisition of ordinary shares by a scheme of arrangement, the acquiring and target companies will not be treated as connected companies for the purposes of the restriction in section 247(4A) in circumstances where:

- Shares are issued by the target company to the acquiring company pursuant to a court-approved scheme of arrangement which is effected in accordance within Chapter 1 of Part 9 of the Companies Act 2014; and
- The scheme of arrangement is undertaken as part of a bona fide acquisition of the ordinary shares in the target company; and
- Immediately before the issue of shares by the target company to the acquiring company, the companies were not connected companies.

3.7 Special provisions in relation to specified intangible assets

3.7.1 Summary

A restriction applies on the amount of interest relief that may be claimed by an investing company where it provides monies to another company through a share subscription or a loan, and that other company uses the monies to acquire a specified intangible asset (within the meaning of section 291A TCA 1997) in respect of which capital allowances are to be made to it under section 284 TCA 1997 as applied by section 291A (section 247(4B)).

The restriction will be applied to the interest paid by the investing company on the loan less any dividends, distributions or interest received from the other company in respect of the monies advanced. Such interest cannot exceed the amount of interest that would be deductible in the hands of that other company, under section 284 as applied by section 291A, if that other company had itself incurred the interest and, that being the case, any additional restrictions applied to that interest by virtue of section 291A were made solely in the form of a restriction of the deduction for that interest.

Where the corresponding accounting periods of the investing company and the other company do not coincide, the amounts of interest are to be apportioned by reference to provisions set out in section 247(4D).

3.7.2 Carry forward of unrelieved interest

The amount of any interest paid by an investing company that has been restricted in accordance with paragraph 3.7.1 may not be relieved under any other provision of the Tax Acts, but may be carried forward and treated as interest paid in the next accounting period of the company for which relief, subject to any restrictions, can be given and so on for each succeeding accounting period (section 247(4C)).

3.8 Intra-group loans to finance the purchase of assets from another group company

3.8.1 Summary

Subject to certain exceptions which are outlined below, relief will not be available under section 247 in respect of interest paid on a loan from a connected company which is used directly or indirectly to acquire certain assets from a connected company. If, for example, a company (the investing company) borrows from a connected company and lends to a company (Company A) and Company A uses the funds to acquire an asset from a company (Company B) which is connected with the investing company, then interest paid by the investing company will not qualify for tax relief under section 247.

This restriction applies in respect of all assets other than:

a) share capital in a company;

b) an asset treated as plant and machinery by virtue of section 291A; or

c) an asset acquired as trading stock.

3.8.2 Exceptions

3.8.2.1 Loan to acquire trade not previously within charge to corporation tax

An exception is made in the case of a loan to acquire a trade from a connected company, and immediately before its acquisition, the profits of the trade were not within the charge to corporation tax. The interest relief is limited to the amount of profits arising from the acquired trade for the accounting period in which the interest is paid. Where the other company begins to carry on the activities of the acquired trade as part of its trade then that part of its trade shall be treated, for the

purposes of these provisions, as a separate trade. Any necessary apportionment shall be made so that profits or gains shall be attributed to the separate trade on a just and reasonable basis and the amount of those profits or gains shall not exceed the amount which would be attributed to a distinct and separate company, engaged in those activities, if it were independent of, and dealing at arm's length with, the investing company (section 247(4E)(c)).

3.8.2.2 Loan to acquire leased assets resulting in a new stream of income

A similar exception is provided for in the case of a loan from an investing company to another company, used wholly and exclusively to acquire an asset leased by the other company in the course of a trade (i.e. a leasing company) which generates a new stream of leasing income. The amount of the interest which can be deducted is restricted to the amount of the new income generated by the acquired asset for the accounting period in which the interest is paid. For the purpose of arriving at the profits or gains of the trade attributed to the acquired asset, any necessary apportionment shall be made to the expenses and receipts of the trade (section 247(4E)(d)(i)).

3.8.3 Back-to-back loans

An anti-avoidance provision applies to prevent companies circumventing the subsection through the use of back-to-back loans with unconnected persons (section 247(4E)(f)).

3.9 Restriction of relief where borrowed monies are on-lent

Relief available to an investing company in respect of interest paid on a loan may be restricted in circumstances where the borrowed monies are on-lent, resulting in interest arising to another company. In particular:

(a) Where the borrowed monies have been on-lent to a company not within the charge to corporation tax and the monies are used wholly and exclusively for the purposes of the trade or business of that other company, then to the extent that interest paid by the investing company on the loan (referred to as the "section 247 loan" for ease of reference) exceeds interest receivable (if any) in respect of the monies on-lent to the other company, then the maximum relief available under section 247 for that excess cannot exceed the amount by which (i) the interest paid on the section 247 loan exceeds (ii) the amount of interest arising to the other company in respect of the use of the monies that have been on-lent (section 247(4F)(b)).

Example 3.9

An investing company (Company A) borrows money from a third-party bank and on-lends to Company B. Company B is not within the charge to corporation tax in the State and uses the monies on-lent wholly and exclusively for the purposes of its trade or business. The monies are on-lent to Company B without interest. Company A pays interest of €200,000 in the year on the section 247 loan. Company B earns interest

of €100,000 in the year in respect of the use of those monies. The maximum relief available to Company A under section 247 is:

Excess of interest paid (€200,000) over interest arising from on-lending to Company B (€0):	€200,000 (**A)**
Maximum relief in respect of the amount at **A** is: Amount by which interest paid by Company A (€200,000) exceeds interest arising to company B (€100,000) in respect of the use of the money.	Maximum relief: €100,000

(b) Where the borrowed monies have been on-lent by an investing company to another company (say, Company C) and the money is used wholly and exclusively for the purposes of the trade or business of a connected company (say, Company D), then:

- Where Company C is **within the charge to corporation tax**, the maximum amount of relief under section 247 available to the investing company in the accounting period in respect of the amount by which interest paid on the section 247 loan exceeds interest (if any) arising from on-lending to Company C for the relevant period cannot exceed the amount by which (i) the interest paid on the section 247 loan; exceeds (ii) the interest (if any) arising to Company D in that relevant period in respect of the use of the monies on-lent.
- Where Company C is **not within the charge to corporation tax**, the amount of relief to be given to the investing company in an accounting period for so much of the interest paid on the section 247 loan as exceeds interest (if any) arising on money on-lent to Company C, cannot exceed the amount by which the interest paid exceeds the greater of:
  - the interest (if any) receivable by Company C from Company D in respect of the use of the money; and
  - the interest receivable by Company D in that relevant period in respect of the use of the money.

3.10 Group relief

Where a loan to an investing company is applied in lending money to a company which is used wholly and exclusively for purposes of the trade of that company, or a connected company, the interest on that loan is treated, for the purposes of group relief, as a relevant trading charge on income (section 247(4G)). In this way the interest as a charge on income surrendered by an investing company by way of group relief can only be set against income chargeable at 12.5% or relieved on a value basis at 12.5%.

3.11 Rules relating to recovery of capital

Section 243(9) applies the provisions of section 249 which restricts relief for interest where a borrower recovers an amount of capital from the company without using it in repayment of the loan. The effect on the investing company is that, thereafter, only so much of any interest payment as is attributable to the loan as so reduced will be treated as a charge on income.

4. Other matters relating to charges on income

4.1 Section 246 TCA 1997

Where the charge consists of interest paid by the company (otherwise than in a fiduciary or representative capacity to an Irish resident), section 246 applies and the company will have to deduct income tax unless the interest comes within the exceptions in section 246(3) (see below).

Section 239 TCA 1997 (see Tax and Duty Manual (TDM) Part 08-01-03) provides special machinery for accounting to Revenue for income tax deducted from charges.

Section 246(3) provides that the paying company will not have to deduct income tax from interest paid in a number of specified circumstances, including for example, where interest is paid to or by a bank in the ordinary course of banking business. Refer to section 246(3) for a full list of exceptions and also see TDM Part 08-03-06.

4.2 Manner in which relief is given

Under section 243 charges on income are allowed as deductions against the profits of the accounting period in which they are paid. The deduction is a "**deduction against the total profits**". It is not, therefore, a deduction made in computing any particular component of the company's income. The deduction is made against the total profits as reduced by any other relief other than group relief in accordance with section 420 and therefore may be claimed against income chargeable at the higher rate.

As stated in paragraph 2.3.2 of this manual, in accordance with section 243A, relevant trading charges on income may not be allowed as a deduction against total profits. Instead relevant trading charges are only allowed as deductions against trading income taxable at the standard rate and certain other income taxable at the standard corporation tax rate of the accounting period in which they are paid.

4.3 Pre-trading expenditure

Charges on income paid by a company before it commences to trade are, where those charges are paid wholly and exclusively for the purpose of the trade, treated as paid at the time of commencement of the trade.

4.4 Payments made by non-resident companies

A non-resident company which is not liable to corporation tax (because it is not trading in the State through a branch or agency) may still be within the charge to income tax in respect of certain income. Where such a company pays charges (other than yearly interest) out of such income they are to be regarded as paid out of profits or gains brought into charge to tax (section 237). Where it pays yearly interest it is obliged to deduct income tax from the payment and account to the Revenue for the income tax so deducted (section 246) whether or not the interest was paid out of profits or gains brought into charge to income tax.

To rank as a charge on income for corporation tax purposes a payment must have been made out of the company's profits brought into charge to corporation tax; consequently a payment to which section 237, applies cannot rank as a charge on income for corporation tax purposes.

4.5 Payments received by resident companies

A charge on income may be paid to a company, as well as to an individual. Where it is paid to an Irish resident company, it is income in the hands of that company and accordingly chargeable to corporation tax and not to income tax. The treatment of any income tax borne on the payment is governed by section 24(2) TCA 1997 i.e. the tax deducted from the payment is allowed as a credit against the company's corporation tax liability for the accounting period in which the payment is taken into account.

If the recipient is a non-resident company trading in the State through a branch or agency, the payment is similarly dealt with so far as it falls within the profits of the company chargeable to corporation tax (section 25(3) TCA 1997 provides for the set-off of any income tax borne against the corporation tax liability). Subject to this, and to the provisions of any relevant double taxation agreement, a charge on income received by a non-resident company is within the charge to income tax so far as it arises in the State.

4.6 Miscellaneous

No payment made by a company resident in the State is to be treated as paid out of profits or gains brought into charge to income tax. It follows that no charge on income paid by such a company will come within section 237.

Where the charge consists of an annuity, royalty or other annual payment other than interest (including any amount which under section 438 TCA 1997 - loans to participators - is deemed to be an annual payment), the company is required to deduct income tax from it at the standard rate in force at the time of payment (section 238).