Corporation Tax Act 2010

2010 CHAPTER 4

[F1PART 21A

RISK TRANSFER SCHEMES

Textual Amendments

F1 Pt. 21A inserted (with effect in accordance with Sch. 16 para. 5 of the amending Act) by Finance Act 2010 (c. 13), **Sch. 16 para. 3**

Introduction

937A Overview

This Part contains rules about the treatment of certain losses made by companies as a result of risk transfer schemes.

937B Group schemes and single company schemes

(1) A risk transfer scheme may be—

(a) a group scheme, or

(b) a risk transfer scheme other than a group scheme (a "single-company scheme").

(2) A risk transfer scheme to which a company ("company A") is a party is a "group scheme" if at least one company other than company A is at any time both—

(a) associated with company A, and

(b) a party to the scheme.

(3) In this Part " the relevant group " means—

(a) company A, and

(b) each company other than company A in relation to which the condition in subsection (2) is met.

(4) In its application in relation to single company schemes, this Part applies subject to the following modifications.

(5) The modifications are that—

(a) references to the relevant group, a member of the relevant group, or the members of the relevant group, are treated as references to company A, and

(b) sections 937E(2) and 937L(2) are treated as omitted.

Basic definitions

937C Meaning of "risk transfer scheme"

(1) A scheme to which a company ("company A") is a party is a "risk transfer scheme" if conditions 1 to 3 are met.

(2) Condition 1 is that the purpose, or one of the main purposes, of any member of the relevant group on entering into the scheme is to obtain a financial advantage for the relevant group that it is reasonable to assume could not otherwise have been obtained without the relevant group becoming subject to (or incurring the cost of avoiding) a relevant risk.

(3) In subsection (2) " a relevant risk " means a risk that the relevant group would make economic losses in one or more accounting periods of company A as a result of fluctuations in—

(a) the rate of exchange between any two currencies,

(b) the retail prices index (or any similar general index of prices) or any other index, or

(c) any price or other value.

(4) Condition 2 is that, as a result of the scheme, and disregarding the effect of this Part, the relevant group—

(a) is not subject to the relevant risk, or

(b) is subject only to a negligible proportion of that risk.

(5) Condition 3 is that, disregarding the effect of the provisions of the Corporation Tax Acts, condition 2 would not be met.

(6) For the purposes of this section the relevant group obtains a "financial advantage" from a scheme if, taking into account the effect of the scheme on each member of the group, the scheme—

(a) increases the return on any investment,

(b) reduces the costs of any borrowing, or

(c) has an effect economically equivalent to that mentioned in paragraph (a) or (b).

937D Meaning of "the scheme rate, index or value"

In this Part " the scheme rate, index or value ", in relation to a risk transfer scheme, means the rate, index or value mentioned in section 937C(3)(a), (b) or (c) in relation to the relevant risk for the scheme.

937E Scheme losses and scheme profits

(1) A loss or profit made by a company in an accounting period is a "scheme loss" or " scheme profit " in relation to a risk transfer scheme to which the company is a party at any time in the period if the loss or profit—

- (a) is from a loan relationship, or derivative contract, that is part of the scheme,
- (b) would, apart from this Part, be brought into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts), and
- (c) arises as a result of fluctuations in the scheme rate, index or value.

(2) References in this Part to a scheme loss or scheme profit made by a company in a period that is not an accounting period of that company are to the scheme loss or scheme profit that the company would have made in the period from the loan relationship or derivative contract in question if the period had been an accounting period of the company.

(3) References in this section to a loss or profit from a loan relationship or a derivative contract include—

- (a) a loss or profit from a related transaction, and
- (b) a loss or profit of a capital nature.

(4) In subsection (3)(a) " related transaction " has the meaning given by—

- (a) section 304 of CTA 2009 (in relation to a loan relationship), or
- (b) section 596 of that Act (in relation to a derivative contract).

937F Ring-fenced scheme losses and relevant scheme profits

(1) Subsection (2) applies if—

- (a) a company makes one or more scheme losses in an accounting period in relation to a risk transfer scheme, and
- (b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic loss in the period as a result of fluctuations in the scheme rate, index or value.

(2) The relevant proportion of each scheme loss made by the company in the accounting period is a "ring-fenced scheme loss".

(3) For this purpose " the relevant proportion " means—

$$\frac{A - B - C}{A}$$

Changes to legislation: *There are currently no known outstanding effects for the Corporation Tax Act 2010, Part 21A. (See end of Document for details)*

where—

A is the total of the scheme losses made in the period in relation to the scheme by the members of the relevant group,

B is the total of the scheme profits made in the period in relation to the scheme by the members of the relevant group, and

C is the pre-tax economic loss referred to in subsection (1)(b).

(4) Subsection (5) applies if—
   (a) a company makes one or more scheme profits in an accounting period in relation to a risk transfer scheme, and
   (b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic profit in the period as a result of fluctuations in the scheme rate, index or value.

(5) The relevant proportion of each scheme profit made by the company in the accounting period is a "relevant scheme profit".

(6) For this purpose " the relevant proportion " means—

$$\frac{A - B - C}{A}$$

where—

A is the total of the scheme profits made in the period in relation to the scheme by the members of the relevant group,

B is the total of the scheme losses made in the period in relation to the scheme by the members of the relevant group, and

C is the pre-tax economic profit referred to in subsection (4)(b).

Treatment of ring-fenced scheme losses

937G Ring-fenced scheme loss: treatment in period in which made

(1) This section applies for the purpose of determining the amount (if any) of a ring-fenced scheme loss that may be brought into account by a company in the accounting period in which it is made.

(2) If the amount of the company's profits pool for the scheme as at the beginning of the period is nil, the ring-fenced scheme loss may not be brought into account.

(3) If the amount of the company's profits pool for the scheme as at the beginning of the period is—
   (a) greater than nil, and
   (b) less than the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company,

only the relevant proportion of the ring-fenced scheme loss may be brought into account.

(4) For this purpose “ the relevant proportion ” means—

$$\frac{A}{B}$$

where—

A is the amount of the company's profits pool as at the beginning of the period, and

B is the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company.

(5) If the amount of the company's profits pool for the scheme as at the beginning of the period is equal to or greater than the total of the ring-fenced scheme losses made in the period in relation to the scheme by the company, the ring-fenced scheme loss may be brought into account in full.

(6) A reference in this paragraph to bringing a ring-fenced scheme loss into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

937H Ring-fenced scheme loss: treatment in subsequent periods

(1) This section applies where—

(a) a company makes one or more scheme profits in an accounting period in relation to a risk transfer scheme,

(b) disregarding any profits or losses made otherwise than as a result of the scheme, the relevant group makes a pre-tax economic profit in the period as a result of fluctuations in the scheme rate, index or value, and

(c) the amount of the company's losses pool for the scheme as at the beginning of the period is greater than nil.

(2) The company may bring into account, as if it were a loss made in the period from a loan relationship—

$$A \times B$$

where—

A is so much of the amount of the company's losses pool as at the beginning of the period as does not exceed the total of the relevant scheme profits made in the period in relation to the scheme by the company, and

B is the proportion of the total of the relevant scheme profits made in the period in relation to the scheme by the company that consists of profits made from its loan relationships.

(3) The company may bring into account, as if it were a loss made in the period from a derivative contract—

$$A \times C$$

where—

A has the same meaning as in subsection (2), and

C is the proportion of the total of the relevant scheme profits made in the period in relation to the scheme by the company that consists of profits made from its derivative contracts.

(4) A reference in this section to bringing an amount into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

A company's losses pool and profits pool

937I A company's losses pool and profits pool

(1) The amount of a company's losses pool for a risk transfer scheme as at the beginning of an accounting period ("the current accounting period") is—

$$A + B - C$$

where—

A is—

(a) the amount of the pool as at the beginning of the previous accounting period, or

(b) if the risk transfer scheme began in the current accounting period, nil,

B is the total amount, if any, of ring-fenced scheme losses made in the previous accounting period in relation to the scheme by the company that, as a result of the application of section 937G(2) or (3), are not brought into account in that period, and

C is the total amount (if any) that, as a result of the application of section 937H(2) or (3), is brought into account in the previous accounting period in relation to the scheme by the company.

(2) The amount of a company's profits pool for a risk transfer scheme as at the beginning of an accounting period ("the current accounting period") is—

$$A + B - C$$

where—

A is—

(a) the amount of the pool as at the beginning of the previous accounting period, or

(b) if the risk transfer scheme began in the current accounting period, nil,

B is—

(a) the total of any relevant scheme profits made in the previous accounting period in relation to the scheme by the company, less

(b) the total amount (if any) that, as a result of the application of section 937H(2) or (3), is brought into account in that accounting period in relation to the scheme by the company, and

C is the total amount (if any) of ring-fenced scheme losses made in the previous accounting period in relation to the scheme by the company that, as a result of the application of section 937G(3) or (5), are brought into account in that period.

General

937J Tax capacity assumption

(1) This section applies for the purpose of determining whether condition 2 in section 937C is met.

(2) Where a member of the relevant group (“ the company ”) makes a scheme loss in an accounting period, the economic profits and losses made by the relevant group in the period must be calculated on the assumption that the company obtained the full tax benefit of the loss.

(3) The “full tax benefit” of the loss is the reduction in the corporation tax liability of the company that would result if—

(a) the loss were brought into account, and

(b) the company's profits chargeable to corporation tax, before doing so, were equal to the debit (or the reduction in any credit) determined by reference to the loss.

(4) A reference in this section to bringing a loss into account is to bringing it into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

937K Meaning of “associated with”

(1) For the purposes of this Part a company (“company B”) is associated with another company (“company A”) at a time (“ the relevant time ”) if any of the following five conditions is met.

(2) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(3) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(4) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(5) The fourth condition is that—

(a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and

(b) at the relevant time the third company has a major interest in company B.

(6) The fifth condition is that—

(a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and

(b) at the relevant time the third company has a major interest in company B.

(7) In this section the financial results of any two companies for any period meet "the consolidation condition" if—

(a) they are required to be comprised in group accounts prepared under section 399 of the Companies Act 2006 (duty of certain parent companies to prepare group accounts), or

(b) they would be required to be comprised in such accounts but for the application of an exemption mentioned in subsection (3) of that section.

(8) The following provisions apply for the purposes of this section—

sections 466 to 471 of CTA 2009 (companies connected for accounting period), and

sections 473 and 474 of CTA 2009 (meaning of "major interest").

937L Interpretation of references to economic losses and profits

(1) A reference in this Part to an "economic" loss or profit made by any person in a period is to a loss or profit made by that person in that period, computed taking into account unrealised (as well as realised) losses and profits.

(2) For the purposes of this Part an economic loss or profit is made "by the relevant group" if it is made by the members of the relevant group considered together.

(3) Where—

(a) any member of the relevant group makes a scheme loss or profit in an accounting period, and

(b) that scheme loss or profit is, under generally accepted accounting practice, calculated by reference to fluctuations in the scheme rate, index or value over a longer period,

the economic loss or profit made by the group in the accounting period as a result of those fluctuations is, so far as it relates to that scheme loss or profit, to be computed over that longer period.

(4) In determining for the purposes of this Part the amount of an economic loss or profit made by the relevant group in any period, the economic losses and profits of each member of the relevant group—

(a) are (subject to subsection (3)) to be computed over that period (whether or not that period is an accounting period of the member), but

(b) are only to be taken into account to the extent that they are attributable to times at which the member is a party to the risk transfer scheme in question.

(5) A reference in this Part to a "pre-tax" economic loss or profit is a reference to an economic loss or profit determined disregarding any loss or gain made as a result of the operation of any provision of the Corporation Tax Acts.

937M Foreign currency accounting

(1) In determining under this Part amounts that a company may or may not bring into account in an accounting period, economic losses and profits are to be computed in the tax calculation currency of that company in that accounting period.

(2) Section 17(5) of CTA 2010 (meaning of references to the tax calculation currency of a company) applies for the purposes of this section.

937N Meaning of "scheme"

In this Part " scheme " includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

[F2 937NA Priority

For the purposes of this Part, the provisions of Part 10 of TIOPA 2010 (corporate interest restriction) are to be treated as of no effect.**]**

Textual Amendments

F2 S. 937NA inserted (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 7**

Power to amend this Part

937O Power to amend this Part in its application to dealers in securities

(1) The Treasury may by order amend any enactment contained in this Part so as to apply (with or without modifications) the rules in this Part about scheme losses and scheme profits to losses and profits made in a trade.

(2) The power conferred by subsection (1) may only be exercised in relation to losses and profits made by a company that carries on a banking business, an insurance business or a business consisting wholly or partly of dealing in securities.

(3) In this section " securities " includes—

- (a) shares,
- (b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of that Act, and
- (c) in the case of a company with no share capital, interests in the company possessed by members of the company.

(4) An order under this section—

- (a) may make different provision for different cases or purposes, and

(b) may include incidental, consequential, supplementary or transitional provision.**]**