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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2015, PART 1. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 7

#### LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

##### PART 1

###### LOAN RELATIONSHIPS: AMENDMENTS OF PARTS 5 AND 6 OF CTA 2009

- 1 Part 5 of CTA 2009 (loan relationships) is amended as follows.
- 2 In section 306 (overview of Chapter 3 of Part 5), in subsection (2)—
- (a) before paragraph (a) insert—
    - “(za) makes provision about the matters in respect of which amounts are to be brought into account (see section 306A),”
  - (b) in paragraph (c), for “policy” substitute “basis”, and
  - (c) for paragraph (g) substitute—
    - “(g) makes provision about cases where amounts are recognised even though companies are not, or have ceased to be, parties to loan relationships (see section 330A), and”.
- 3 After section 306 insert—

*“Matters in respect of which amounts are to be brought into account*

###### **306A Matters in respect of which amounts to be brought into account**

- (1) The matters in respect of which amounts are to be brought into account for the purposes of this Part in respect of a company's loan relationships are—
  - (a) profits and losses of the company that arise to it from its loan relationships and related transactions (excluding interest or expenses),
  - (b) interest under those relationships, and
  - (c) expenses incurred by the company under or for the purposes of those relationships and transactions.
- (2) Expenses are only treated as incurred as mentioned in subsection (1)(c) if they are incurred directly—
  - (a) in bringing any of the loan relationships into existence,
  - (b) in entering into or giving effect to any of the related transactions,
  - (c) in making payments under any of those relationships or as a result of any of those transactions, or

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- (d) in taking steps to ensure the receipt of payments under any of those relationships or in accordance with any of those transactions.
- (3) For the treatment of pre-loan relationship and abortive expenses, see section 329.”
- 4 (1) Section 307 (general principles about the bringing into account of credits and debits) is amended as follows.
- (2) In subsection (2), after “this Part” insert “ in respect of the matters mentioned in section 306A(1) ”.
- (3) After subsection (2) insert—
- “(2A) Subsections (2B) and (2C) apply if an accounting period of a company does not coincide with one or more of its periods of account.
- (2B) The amounts referred to in subsection (2) are to be determined by apportionment in accordance with section 1172 of CTA 2010 (time basis).
- (2C) But if it appears that apportionment in accordance with that section would work unreasonably or unjustly for an accounting period, subsection (2) is to be read as referring to amounts that would have been recognised in determining the company's profit or loss for that period in accordance with generally accepted accounting practice if accounts had been drawn up for that period.”
- (4) Omit subsections (3) to (5).
- (5) For subsection (6) substitute—
- “(6) This section is subject to the following provisions of this Part.”
- 5 (1) Section 308 (amounts recognised in determining a company's profit or loss) is amended as follows.
- (2) In subsection (1), for the words from “recognised”, in the second place, onwards substitute “ that is recognised in the company's accounts for the period as an item of profit or loss ”.
- (3) After subsection (1) insert—
- “(1A) The reference in subsection (1) to an amount recognised in the company's accounts for the period as an item of profit or loss includes a reference to an amount that—
- (a) was previously recognised as an item of other comprehensive income, and
- (b) is transferred to become an item of profit or loss in determining the company's profit or loss for the period.
- (1B) In subsections (1) and (1A) “item of profit or loss” and “item of other comprehensive income” each has the meaning that it has for accounting purposes.”
- (4) Omit subsections (2) and (3).
- 6 In section 310 (power to make regulations about recognised amounts)—
- (a) in subsections (1)(a) and (b) and (2), omit “or (2)”, and

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- (b) omit subsection (5).
- 7 (1) Section 313 (basis of accounting) is amended as follows.
- (2) In subsection (1), omit the words from “and, in particular,” onwards.
- (3) In subsection (2)—
- (a) omit “sections 307(3) and (4) and”,
  - (b) omit paragraphs (e) and (f),
  - (c) at the end of paragraph (g) insert “ and ”, and
  - (d) omit paragraph (i) and the “and” immediately before it.
- (4) Omit subsection (3).
- (5) In subsection (4), for the words from “shown” onwards substitute “ measured in the company's balance sheet at its amortised cost using the effective interest method, but with that amortised cost being adjusted as necessary where the loan relationship is the hedged item under a designated fair value hedge ”.
- (6) After subsection (4) insert—
- “(4A) In subsection (4) each of the following expressions has the meaning that it has for accounting purposes—
- “amortised cost”, in relation to assets or liabilities;
  - “the effective interest method”, in relation to the measurement of assets or liabilities.”
- (7) For subsection (5) substitute—
- “(5) In this Part “fair value accounting” means a basis of accounting under which—
- (a) assets and liabilities are measured in the company's balance sheet at their fair value, and
  - (b) changes in the fair value of assets and liabilities are recognised as items of profit or loss.”
- (8) For subsection (6) substitute—
- “(6) For the meaning of “fair value”, see section 476(1).
- (7) In this Part each of the following has the meaning that it has for accounting purposes—
- “designated fair value hedge”;
  - “hedged item”.”
- 8 In the italic heading before section 315, for “policy” substitute “ basis ”.
- 9 (1) Section 315 (introduction to sections 316 to 319) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Sections 316 and 318 (adjustments on change of accounting basis) apply if—
- (a) a company changes, from one period of account or accounting period to the next, the basis of accounting on which credits and debits relating to its loan relationships or any of them are calculated for the purposes of this Part,

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- (b) the change of basis—
    - (i) is made in order to comply with a provision made by or under this Part requiring those credits and debits to be determined on a particular basis of accounting, or
    - (ii) results from a change of the company's accounting policy,
  - (c) the change of basis is not made in order to comply with amending legislation not applicable to the previous period,
  - (d) the old basis accorded with the law or practice applicable in relation to the period before the change, and
  - (e) the new basis accords with the law and practice applicable to the period after the change.”
- (3) In subsection (2)—
- (a) for “to 319” substitute “ and 318 ”, and
  - (b) in paragraph (a), for “those periods of account” substitute “ the periods mentioned in subsection (1) ”.
- (4) Omit subsection (3).
- (5) In the heading, for “to 319” substitute “ and 318 ”.
- 10 For section 316 substitute—

**“316 Change of basis of accounting involving change of value**

- (1) If there is a difference between—
    - (a) the tax-adjusted carrying value of an asset or liability at the end of the earlier period, and
    - (b) the tax-adjusted carrying value of that asset or liability at the beginning of the later period,

a credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.
  - (2) This section does not apply so far as the credit or debit falls to be brought into account apart from this section.”
- 11 Omit section 317 (carrying value).
- 12 (1) Section 318 (change of accounting policy following cessation of loan relationship) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute—
    - “(b) section 330A (company is not, or has ceased to be, party to loan relationship) applied to the cessation, and”.
  - (3) For subsections (2) and (3) substitute—
    - “(2) A credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of this Part for the later period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.”

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- (4) In subsection (4), for “Subsections (2) and (3) do” substitute “ Subsection (2) does ”.
- (5) For subsection (5) substitute—
- “(5) In this section “the amount outstanding in respect of the loan relationship” means—
- (a) so much of the recognised deferred income or recognised deferred loss from the loan relationship as has not been represented by credits or debits brought into account under this Part in respect of the relationship, and
  - (b) any amounts relating to the matters mentioned in section 306A(1) in respect of the loan relationship that have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and not transferred to become items of profit or loss.”
- (6) After subsection (6) insert—
- “(7) In determining what amounts fall within subsection (5)(b) at the beginning or end of a period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods.
- (8) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods which differs from that mentioned in subsection (7), that different assumption applies in determining what amounts fall within subsection (5)(b) at the beginning or end of the period.”
- (7) In the heading, for “policy” substitute “ basis ”.
- 13 (1) Section 320 (credits and debits treated as relating to capital expenditure) is amended as follows.
- (2) For subsections (1) to (3) substitute—
- “(1) This section applies if—
- (a) an amount for an accounting period in respect of a company's loan relationship relates to any of the matters in section 306A(1),
  - (b) generally accepted accounting practice allows the amount to be treated in the company's accounts as an amount recognised in determining the carrying value of an asset or liability, and
  - (c) any profit or loss for corporation tax purposes in relation to that asset or liability will not fall to be calculated in accordance with generally accepted accounting practice.
- (2) Despite that treatment, the amount is to be brought into account as a credit or debit for the purposes of this Part, for the accounting period for which it is recognised, in the same way as an amount which is brought into account as a credit or debit in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.
- (3) But subsection (2) does not apply to an amount which relates to an intangible fixed asset to which an election under section 730 (writing down at fixed rate: election for fixed-rate basis) applies.”

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(3) Omit subsection (4).

(4) For subsections (5) and (6) substitute—

“(5) If an amount relating to an asset or liability is brought into account as mentioned in subsection (2) as a debit, no debit may be brought into account for the purposes of this Part in respect of—

- (a) the writing down of so much of the value of the asset or liability as is attributable to that debit, or
- (b) so much of any amortisation or depreciation representing a writing-off of that value as is attributable to that debit.”

14           After section 320 insert—

**“320A Amounts recognised in other comprehensive income and not transferred to profit or loss**

(1) This section applies if—

- (a) in a period of account an asset or liability representing a loan relationship of a company ceases in accordance with generally accepted accounting practice to be recognised in the company's accounts,
- (b) amounts relating to the matters mentioned in section 306A(1) in respect of that loan relationship have in accordance with generally accepted accounting practice been recognised in the company's accounts as items of other comprehensive income and have not subsequently been transferred to become items of profit or loss, and
- (c) condition A or B is met.

(2) Condition A is that, at the time when the asset or liability ceases to be recognised, it is not expected that the amounts mentioned in subsection (1)

(b) will in future be transferred to become items of profit or loss.

(3) Condition B is that, at any later time, it is no longer expected that the amounts mentioned in subsection (1)(b) will in future be transferred to become items of profit or loss.

(4) The amounts mentioned in subsection (1)(b)—

- (a) must be brought into account for the purposes of this Part as credits or debits for the period of account in which the time mentioned in subsection (2) or (3) falls, in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice, and
- (b) must not be brought into account for a later period of account even if they are subsequently transferred to become items of profit or loss for the later period.

(5) This section applies in a case where part of an asset or liability representing a loan relationship of a company ceases to be recognised in the company's accounts as it applies in a case where the whole of an asset or liability representing a loan relationship ceases to be recognised, but as if the reference in subsection (1)(b) to amounts in respect of the loan relationship

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were a reference to so much of those amounts as are attributable to that part of the asset or liability.

(6) In determining what amounts fall within subsection (1)(b) at any time in an accounting period, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous accounting periods.

(7) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous accounting periods which differs from that mentioned in subsection (6), that different assumption applies in determining what amounts fall within subsection (1)(b) at the time in question.

(8) In this section “item of profit or loss” and “item of other comprehensive income” each has the meaning that it has for accounting purposes.”

15 Omit section 321 (credits and debits recognised in equity).

16 (1) Section 322 (credits not required to be brought into account in respect of release of debt in certain cases) is amended as follows.

(2) In subsection (2), for “D” substitute “ E ”.

(3) Omit subsection (4A).

(4) After subsection (5A) insert—

“(5B) Condition E is that—

- (a) the release is neither a deemed release, as defined by section 358(3), nor a release of relevant rights, and
- (b) immediately before the release, it is reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months the company would be unable to pay its debts.”

(5) After subsection (6) insert—

“(6A) In subsections (4) and (5B)(a), “relevant rights” has the same meaning as in section 358.”

(6) In subsection (7), after “Section” insert “ 323(A1) applies for the interpretation of subsection (5B)(b); and the rest of section ”.

17 In section 323 (meaning of expressions relating to insolvency etc.), before subsection (1) insert—

“(A1) For the purposes of sections 322(5B) and 323A(1)(b) a company is unable to pay its debts if—

- (a) it is unable to pay its debts as they fall due, or
- (b) the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”

18 After section 323 insert—

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**“323A Substantial modification: cases where credits not required to be brought into account**

- (1) Subsection (2) applies if—
  - (a) a debtor relationship of a company is modified or replaced by another,
  - (b) immediately before the modification or replacement it is reasonable to assume that, without the modification or replacement and any arrangements of which the modification or replacement forms part, there would be a material risk that at some time within the next 12 months the company would be unable to pay its debts, and
  - (c) the modification or replacement is treated for accounting purposes as a substantial modification of the terms of a loan relationship of the company.
- (2) The company is not required to bring into account for the purposes of this Part a credit in respect of any change in the carrying value of the liability representing the modified or replacement debtor relationship.
- (3) If as a result of subsection (2) no credit was brought into account in respect of a change in the carrying value of a liability representing a debtor relationship, the company may not bring into account a debit for the purposes of this Part in respect of a change in the carrying value of that liability, to the extent that the change represents a reversal of the change in carrying value to which subsection (2) applied.
- (4) Section 323(A1) applies for the interpretation of subsection (1)(b).”

19 In section 324 (restriction on debts resulting from revaluation), after subsection (3) insert—

“(3A) Where a company has a hedging relationship between a relevant contract (“the hedging instrument”) and the asset or liability representing the loan relationship, this section does not prevent credits or debits being brought into account in respect of changes in the fair value of the asset or liability which are attributable to any of the risks in respect of which the hedging instrument was intended to act as a hedge.”

20 (1) Section 328 (exchange gains and losses) is amended as follows.

- (2) In subsection (1), for “section 307(3)” substitute “ section 306A(1) ”.
- (3) Omit subsections (2) and (2A).
- (4) For subsection (3) substitute—

“(3) But subsection (1) does not apply to an exchange gain or loss of a company so far as it—

- (a) arises as a result of the translation of the assets, liabilities, income and expenses of all or part of the company's business from the functional currency of the business, or that part of the business, into another currency, and
- (b) has been recognised as an item of other comprehensive income.

(3A) In subsection (3)—



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- (a) the reference to the functional currency of a business or part of a business is a reference to the currency of the primary economic environment in which the business or part operates, and
  - (b) “assets, liabilities, income and expenses” and “item of other comprehensive income” each has the meaning that it has for accounting purposes.
- (3B) No amount is to be brought into account for the purposes of this Part in respect of an exchange gain or loss of an investment company (within the meaning of section 17 of CTA 2010) which would not have arisen but for a change in the company's functional currency (within the meaning of section 17(4) of that Act) as between—
  - (a) the period of account of the company in which the gain or loss arises, and
  - (b) a period of account of the company ending in the 12 months immediately preceding that period.
- (3C) But subsection (3B) does not apply to an exchange gain or loss arising at a time when an election under section 9A of CTA 2010 (designated currency of UK resident investment company) has effect in relation to the company.”
- (5) For subsection (4) substitute—
  - “(4) The Treasury may by regulations make provision—
    - (a) excluding exchange gains or losses of a specified description from being brought into account for the purposes of this Part,
    - (b) requiring exchange gains or losses of a specified description which would not otherwise be brought into account for the purposes of this Part to be brought into account in specified circumstances,
    - (c) as to the way in which, including the currency by reference to which, any exchange gains or losses to be brought into account as a result of provision made under paragraph (b) are to be calculated, and
    - (d) as to the way in which any such exchange gains or losses are to be brought into account.
  - (4ZA) For the purposes of subsection (4)(b), it does not matter whether the exchange gains or losses would otherwise be excluded from being brought into account as a result of regulations under subsection (4)(a) or otherwise.”
- (6) Omit subsections (4A) and (5).
- (7) For subsection (6) substitute—
  - “(6) The reference in subsection (4) to bringing exchange gains or losses into account is a reference to bringing them into account—
    - (a) for the purposes of this Part as credits or debits arising to a company from its loan relationships, or
    - (b) for the purposes of corporation tax on chargeable gains.”
- 21 Omit sections 328A to 328H (loan relationships: arrangements that have a “one-way exchange effect”) (which are superseded by the amendment made by paragraph 51).
- 22 (1) Section 329 (pre-loan relationship and abortive expenses) is amended as follows.

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- (2) In subsection (1)(c), for “section 307(3)(c)” substitute “ section 306A(1)(c) ”.
- (3) In subsection (2), for “section 307(3)” substitute “ section 307(2) ”.

23 After section 330 insert—

*“Company is not, or has ceased to be, party to loan relationship*

**330A Company is not, or has ceased to be, party to loan relationship**

- (1) This section applies if—
- (a) amounts in respect of a qualifying relationship are recognised in a company's accounts for an accounting period (“the current period”) as an item of profit or loss even though during all or part of the period the company is not a party to the qualifying relationship,
  - (b) any of conditions A to D is met, and
  - (c) in the absence of this section, the credits and debits brought into account by the company for the purposes of this Part or Part 7 for the current period would not include credits or debits representing the whole of those amounts.

- (2) In this section “qualifying relationship” means—
- (a) a loan relationship, or
  - (b) a relationship that would be a loan relationship if references in section 302(1) to a company were references to any person.

References in this section to a company being a party to a qualifying relationship are to be read accordingly.

- (3) Condition A is that—
- (a) the company was a party to the qualifying relationship,
  - (b) amounts in respect of the qualifying relationship were recognised in the company's accounts as an item of profit or loss when it was a party to the relationship, and
  - (c) any amounts in respect of the relationship continue to be recognised in those accounts as an item of profit or loss.
- (4) Condition B is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a transaction which has the effect of transferring to the company all or part of the risk or reward relating to the qualifying relationship without a corresponding transfer of rights or obligations under the relationship.
- (5) Condition C is that the amounts recognised as mentioned in subsection (1)(a) are recognised as a result of a related transaction in relation to a qualifying relationship to which the company was, but has ceased to be, a party.
- (6) Condition D is that—
- (a) the amounts recognised as mentioned in subsection (1)(a) are recognised because the company may enter into a qualifying relationship or related transaction but has not yet done so, and
  - (b) the amounts are not expenses to which section 329 applies.

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- (7) The company must bring credits and debits into account for the purposes of this Part for the accounting period as if the company were a party to the qualifying relationship for the whole of the accounting period.
- (8) The amounts that must be brought into account are those amounts in respect of the qualifying relationship that are recognised in the company's accounts for the accounting period as an item of profit or loss (but subject to the provisions of this Part).
- (9) This section is subject to sections 330B and 330C.
- (10) In this section—
  - “item of profit or loss” has the meaning it has for accounting purposes;
  - “recognised” means recognised in accordance with generally accepted accounting practice;
  - “related transaction”, in relation to a qualifying relationship, is to be read as if the references in section 304(1) and (2) to a loan relationship were to a qualifying relationship.

### **330B Exclusion of debit where relief allowed to another**

A company is not to bring into account as a debit for the purposes of this Part as a result of section 330A an amount which—

- (a) is brought into account as a debit for those purposes by another company,
- (b) is brought into account so as to reduce the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or
- (c) is allowable as a deduction by a person for the purposes of income tax.

### **330C Avoidance of double charge**

- (1) This section applies if at any time a company (“the relevant company”) is required by section 330A to bring into account as a credit for the purposes of this Part an amount—
  - (a) which is brought into account as a credit for those purposes by another company,
  - (b) which is brought into account in determining the assumed taxable total profits of another company for the purposes of Part 9A of TIOPA 2010 (controlled foreign companies), or
  - (c) on which a person is charged to income tax.
- (2) In order to avoid a double charge to tax in respect of the amount, the relevant company may make a claim for one or more consequential adjustments to be made in respect of the amount to be brought into account as a credit.
- (3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (4) Consequential adjustments may be made—

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- (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under any enactment.”
- 24 Omit section 331 (company ceasing to be a party to loan relationship) and section 332 (repo, stock lending and other transactions).
- 25 In section 340 (group transfers and transfers of insurance business: transfer at notional carrying value), in subsection (6)—
- (a) omit paragraph (a), and
  - (b) in paragraph (c), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
- 26 (1) Section 342 (issue of new securities on reorganisations: disposal at notional carrying value) is amended as follows.
- (2) In subsection (3), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
  - (3) In subsection (4), omit the definition of “carrying value”.
- 27 Omit section 347 (disapplication of Chapter 4 of Part 5 where transferor party to avoidance) (which is superseded by the amendment made by paragraph 51).
- 28 (1) Section 349 (application of amortised cost basis to connected companies relationships) is amended as follows.
- (2) After subsection (2) insert—
    - “(2A) Where—
      - (a) a company has a hedging relationship between a relevant contract (“the hedging instrument”) and the asset or liability representing the loan relationship, and
      - (b) the loan relationship is dealt with in the company's accounts on the basis of fair value accounting,

it is to be assumed in applying an amortised cost basis of accounting for the purpose of subsection (2) that the hedging instrument has where possible been designated for accounting purposes as a fair value hedge of the loan relationship.”
  - (3) Omit subsections (3) and (4).
- 29 Omit section 350 (companies beginning to be connected) and section 351 (companies ceasing to be connected).
- 30 In section 352 (disregard of related transactions), after subsection (3) insert—
- “(3A) Subsections (2) and (3) do not affect the credits or debits to be brought into account for the purposes of this Part in respect of changes in the fair value of the asset that are attributable to changes in the corresponding market rate.
  - (3B) Subsection (3A) is subject to section 354 (exclusion of debits for impaired or released connected companies debts).
  - (3C) In relation to a debt, “the corresponding market rate” at any time is the lowest rate at which a company of good financial standing might at that time expect to be able to borrow money at arm's length in the currency applicable to the

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debt, for repayment at the same time as the debt and otherwise on similar terms.”

31 After section 352 insert—

**“352A Exclusion of credits on reversal of disregarded loss**

(1) If as a result of section 352 the debits brought into account by a company in respect of a loan relationship are reduced, no credit is to be brought into account for the purposes of this Part to the extent that it represents the reversal of so much of the loss as was not brought into account as a debit.

(2) Nothing in this section affects the credits to be brought into account for the purposes of this Part in respect of exchange gains or losses resulting from a debt.”

32 In section 354 (exclusion of debits for impaired or released connected companies debts), after subsection (2) insert—

“(2A) Where the carrying value of an asset representing the creditor relationship has at any time been adjusted as a result of the asset being the hedged item under a designated fair value hedge, the rule in subsection (1) does not prevent a credit or debit being brought into account for the purposes of this Part in respect of any reversal of that adjustment.”

33 (1) Section 358 (exclusion of credits on release of connected companies debts: general) is amended as follows.

(2) For subsection (4) substitute—

“(4) For the purposes of this section “relevant rights” means rights of a company (“C”) that—

- (a) were acquired by C, before the day on which F(No2)A 2015 was passed, in circumstances that, but for the application of the old corporate rescue exception or the old debt-for-debt exception, would have resulted in a deemed release under section 361(3), or
- (b) were acquired by another company before that day in such circumstances and transferred to C by way of an assignment or assignments.

(4A) In subsection (4)(a)—

- (a) “the old corporate rescue exception” means the exception in section 361A (as it had effect before F(No2)A 2015);
- (b) “the old debt-for-debt exception” means the exception in section 361B (as it had effect before that Act).”

(3) After subsection (6) insert—

“(7) Where the carrying value of a liability representing the debtor relationship has at any time been adjusted as a result of the liability being the hedged item under a designated fair value hedge, this section does not prevent a credit or debit being brought into account for the purposes of this Part in respect of any reversal of that adjustment.

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- (8) Nothing in this section affects the credits or debits to be brought into account for the purposes of this Part in respect of exchange gains or losses arising from a debt.”
- 34 (1) Section 359 (exclusion of credits on release of connected companies debts during creditor's insolvency) is amended as follows.
- (2) In subsection (1)(d), for “the condition in question” substitute “ any of those conditions ”.
- (3) After subsection (2) insert—
- “(3) Where the carrying value of a liability representing the debtor relationship has at any time been adjusted as a result of the liability being the hedged item under a designated fair value hedge, this section does not prevent a credit being brought into account for the purposes of this Part in respect of any reversal of that adjustment.”
- 35 (1) Section 361 (acquisition of creditor rights by connected company at undervalue) is amended as follows.
- (2) In subsection (1), for paragraph (f) substitute—
- “(f) the equity-for-debt exception (see section 361C) does not apply.”
- (3) Omit subsection (2).
- (4) After subsection (6) insert—
- “(7) Subsections (3) and (4) are subject to section 361D (corporate rescue: debt released shortly after acquisition).”
- 36 Omit section 361A (the corporate rescue exception) and section 361B (the debt-for-debt exception).
- 37 After section 361C insert—

**“361D Corporate rescue: debt released shortly after acquisition**

- (1) This section applies if—
- (a) the case is one in which section 361 would otherwise apply,
  - (b) within 60 days after C becomes a party to the loan relationship as creditor, C or a company connected with C releases D's liability to pay an amount under the loan relationship, and
  - (c) the corporate rescue conditions are met.
- (2) If the release is of the whole debt, section 361 does not apply to the acquisition of the rights by C.
- (3) If the release is of part of the debt, the amount that C is treated by section 361 as having released when it acquired the rights under the loan relationship is reduced (but not below nil) by the amount that is actually released as mentioned in subsection (1)(b).
- (4) The corporate rescue conditions are—
- (a) that the acquisition by C of its rights under the loan relationship is an arm's length transaction,

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- (b) that immediately before C became a party to the loan relationship as creditor, it was reasonable to assume that, without the release and any arrangements of which the release forms part, there would be a material risk that at some time within the next 12 months the company would have been unable to pay its debts.
- (5) For the purposes of subsection (4)(b), a company is unable to pay its debts if—
  - (a) it is unable to pay its debts as they fall due, or
  - (b) the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”
- 38 In section 362 (parties becoming connected where creditor's rights subject to impairment adjustment etc), after subsection (5) insert—
  - “(6) Subsections (2) and (3) are subject to section 362A (corporate rescue: debt released shortly after connection arises).”
- 39 After section 362 insert—

**“362A Corporate rescue: debt released shortly after connection arises**

  - (1) This section applies if—
    - (a) the case is one in which section 362 would otherwise apply,
    - (b) within 60 days after C and D become connected, C releases D's liability to pay an amount under the loan relationship, and
    - (c) the corporate rescue conditions are met.
  - (2) If the release is of the whole debt, section 362 does not apply by reason of C and D becoming connected.
  - (3) If the release is of part of the debt, the amount that C is treated by section 362 as having released when it became connected with D is reduced (but not below nil) by the amount actually released.
  - (4) The corporate rescue conditions are—
    - (a) that C and D became connected as a result of an arm's length transaction, and
    - (b) that immediately before C and D became connected it was reasonable to assume that, without the connection and any arrangements of which the connection forms part, there would be a material risk that at some time within the next 12 months D would have been unable to pay its debts.
  - (5) For the purposes of subsection (4)(b), a company is unable to pay its debts if—
    - (a) it is unable to pay its debts as they fall due, or
    - (b) the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”
- 40 In section 363 (companies connected for sections 361 to 362), in subsections (1) and (4) and in the heading, for “to 362” substitute “ to 362A ”.

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- 41 In section 422 (transfer of loan relationship at notional carrying value), in subsection (3)—
- (a) omit paragraph (a) (including the “and” at the end), and
  - (b) in paragraph (b), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
- 42 (1) Section 424 (reorganisations involving loan relationships) is amended as follows.
- (2) In subsection (3), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
  - (3) In subsection (4), omit the definition of “carrying value”.
- 43 In section 433 (transfer of loan relationship at notional carrying value), in subsection (3)—
- (a) omit paragraph (a) and the “and” immediately following it, and
  - (b) in paragraph (b), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
- 44 (1) Section 435 (reorganisations involving loan relationships) is amended as follows.
- (2) In subsection (3), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”.
  - (3) In subsection (4), omit the definition of “carrying value”.
- 45 In section 440 (overview of Chapter 15 of Part 5), in subsection (2)—
- (a) in paragraph (a)—
    - (i) omit “and tax relief schemes and arrangements”, and
    - (ii) for “to 443” substitute “ and 442 ”,
  - (b) omit paragraph (f) (including the “and” at the end), and
  - (c) at the end of paragraph (g) insert “and
    - (h) for rules dealing with tax avoidance arrangements, see sections 455B to 455D.”.
- 46 In section 441 (loan relationships for unallowable purposes), after subsection (3) insert—
- “(3A) If—
- (a) a credit brought into account for that period for the purposes of this Part by the company would (in the absence of this section) be reduced, and
  - (b) the reduction represents an amount which, if it did not reduce a credit, would be brought into account as a debit in respect of that relationship,
- subsection (3) applies to the amount of the reduction as if it were an amount that would (in the absence of this section) be brought into account as a debit.”
- 47 In section 442 (meaning of “unallowable purpose”), after subsection (1) insert—
- “(1A) In subsection (1)(b) “related transaction”, in relation to a loan relationship, includes anything which equates in substance to a disposal or acquisition of the kind mentioned in section 304(1) (as read with section 304(2)).”
- 48 Omit section 443 (restriction of relief for interest where tax relief schemes involved) (which is superseded by the amendment made by paragraph 51).



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- 49 In section 450 (meaning of “corresponding debtor relationship”), in subsection (6), for “328(2) to (7)” substitute “ 328(3) to (7) ”.
- 50 Omit section 454 (application of fair value accounting: reset bonds etc) and section 455 (loan relationships: disposal for consideration not fully recognised by accounting practice) (which are superseded by the amendment made by paragraph 51).
- 51 In Chapter 15 of Part 5, after section 455A insert—

*“Counteracting avoidance arrangements*

**455B Counteracting effect of avoidance arrangements**

- (1) Any loan-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to credits and debits to be brought into account for the purposes of this Part.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) For the meaning of “relevant avoidance arrangements” and “loan-related tax advantage”, see section 455C.

**455C Interpretation of section 455B**

- (1) This section applies for the interpretation of section 455B (and this section).
- (2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a loan-related tax advantage.
- (4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any loan-related tax advantages that would (in the absence of section 455B) arise from them can reasonably be regarded as consistent with any principles on which the provisions of this Part that are relevant to the arrangements are based (whether expressed or implied) and the policy objectives of those provisions.
- (5) A company obtains a “loan-related tax advantage” if—
  - (a) it brings into account a debit to which it would not otherwise be entitled,
  - (b) it brings into account a debit which exceeds that to which it would otherwise be entitled,
  - (c) it avoids having to bring a credit into account,
  - (d) the amount of any credit brought into account by the company is less than it would otherwise be, or

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- (e) it brings a debit or credit into account earlier or later than it otherwise would.
- (6) In subsection (5), references to bringing a debit or credit into account are references to bringing a debit or credit into account for the purposes of this Part.

#### **455D Examples of results that may indicate exclusion not applicable**

- (1) Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a loan-related tax advantage are not excluded by section 455C(4) from being “relevant avoidance arrangements” for the purposes of section 455B—
  - (a) the elimination or reduction, for purposes of corporation tax, of profits of a company arising from any of its loan relationships, where for economic purposes profits, or greater profits, arise to the company from that relationship;
  - (b) the creation or increase, for purposes of corporation tax, of a loss or expense arising from a loan relationship, where for economic purposes no loss or expense, or a smaller loss or expense, arises from that relationship;
  - (c) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss or be so recognised earlier;
  - (d) ensuring that a loan relationship is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements;
  - (e) enabling a company to bring into account for the purposes of this Part a debit in respect of an exchange loss, in circumstances where a corresponding exchange gain would not give rise to a credit or would give rise to a credit of a smaller amount;
  - (f) enabling a company to bring into account for the purposes of this Part a debit in respect of a fair value loss in circumstances where a corresponding fair value gain would not give rise to a credit or would give rise to a credit of a smaller amount;
  - (g) ensuring that the effect of the provisions of Chapter 4 is to produce an overall reduction in the credits brought into account for the purposes this Part or an overall increase in the debits brought into account for those purposes;
  - (h) bringing into account for the purposes of this Part an impairment loss or release debit in a case where the provisions of Chapter 6 would but for the arrangements have prevented this.
- (2) But in each case the result concerned is only capable of indicating that section 455C(4) is not available if it is reasonable to assume that such a result was not the anticipated result when the provisions of this Part that are relevant to the arrangements were enacted.
- (3) In subsection (1)(f) references to a fair value gain or a fair value loss, in relation to a company, are references respectively to—

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- (a) a profit to be brought into account in relation to an asset or liability representing a loan relationship where fair value accounting is used for the period in question, or
- (b) a loss to be brought into account in relation to such an asset or liability where fair value accounting is used for the period in question.

(4) “Arrangements” and “loan-related tax advantage” have the same meaning as in section 455C.”

52 After section 465A insert—

*“Tax-adjusted carrying value*

**465B “Tax-adjusted carrying value”**

- (1) This section applies for the purposes of this Part.
- (2) “Tax-adjusted carrying value”, in relation to the asset or liability representing a loan relationship, means the carrying value of the asset or liability recognised for accounting purposes, except as provided by subsection (8).
- (3) For the purposes of this section the “carrying value” of the asset or liability includes amounts recognised for accounting purposes in relation to the loan relationship in respect of—
  - (a) accrued amounts,
  - (b) amounts paid or received in advance, or
  - (c) impairment losses (including provisions for bad or doubtful debts).
- (4) For the meaning of “impairment loss” see section 476(1).
- (5) In determining the tax-adjusted carrying value of an asset or liability in a period of account of a company, it is to be assumed that the accounting policy applied in drawing up the company's accounts for the period was also applied in previous periods of account.
- (6) But if the company's accounts for the period are in accordance with generally accepted accounting practice drawn up on an assumption as to the accounting policy in previous periods of account which differs from that mentioned in subsection (5), that different assumption applies in determining the tax-adjusted carrying value of the asset or liability in the period.
- (7) In determining the tax-adjusted carrying value of an asset or liability at a time other than the end (or beginning) of a period of account of a company, it is to be assumed that a period of account of the company had ended at the time in question.
- (8) In determining the tax-adjusted carrying value of the asset or liability, the provisions specified in subsection (9) apply as they apply for the purposes of determining the credits and debits to be brought into account under this Part.
- (9) Those provisions are—
  - (a) section 308(1A) (amounts recognised in other comprehensive income and transferred to profit and loss),

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- (b) sections 311 and 312 (amounts not fully recognised for accounting purposes),
  - (c) section 320A (amounts recognised in other comprehensive income and not transferred to profit and loss),
  - (d) section 323A (substantial modification: cases where credits not required to be brought into account),
  - (e) section 324 (restriction on debits resulting from revaluation),
  - (f) section 325 (restriction on credits resulting from reversal of disallowed debits),
  - (g) sections 333 and 334 (company ceasing to be UK resident and non-UK company ceasing to hold loan relationship for UK permanent establishment),
  - (h) Chapter 4 (continuity of treatment on transfers within groups or organisations),
  - (i) section 349(2) (application of amortised cost basis of accounting to connected companies relationships),
  - (j) section 352 (disregard of related transactions),
  - (k) section 352A (exclusion of credits on reversal of disregarded loss),
  - (l) section 354 (exclusion of debits for impaired or released connected companies debts),
  - (m) section 360 (exclusion of credits on reversal of impairments of connected companies debts),
  - (n) sections 361 to 363 (deemed debt releases on impaired debts becoming held by connected company),
  - (o) Chapter 8 (connected parties relationships: late interest),
  - (p) section 382 (company partners using fair value accounting),
  - (q) sections 399 to 400C (treatment of index-linked gilt-edged securities),
  - (r) section 404 (restriction on deductions etc relating to FOTRA securities),
  - (s) sections 406 to 412 (deeply discounted securities and close companies),
  - (t) section 415(2) (loan relationships with embedded derivatives),
  - (u) Chapter 13 (European cross-border transfers of business), and
  - (v) Chapter 14 (European cross-border mergers).”
- 53 In section 475 (meaning of expressions relating to exchange gains and losses), in subsection (3), omit “in a case where fair value accounting is used by the company”.
- 54 After section 475 insert—

*“Meaning of “hedging relationship”*

**475A “Hedging relationship”**

- (1) This section applies for the purposes of this Part.
- (2) A company has a “hedging relationship” between a relevant contract (“the hedging instrument”) and an asset or liability (“the hedged item”) so far as condition A or B is met.

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- (3) Condition A is that the hedging instrument and the hedged item are designated as a hedge by the company.
- (4) Condition B is that—
- (a) the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of the hedged item which is attributable to a particular risk and could affect the profit or loss of the company, and
  - (b) the hedged item is an asset or liability recognised for accounting purposes or is an identified portion of such an asset or liability.
- (5) For the purposes of subsections (2) and (4), the liabilities of a company include its own share capital.”
- 55 In section 476 (other definitions), in subsection (1)—
- (a) before the definition of “alternative finance arrangements” insert—

““accounting policy”, in relation to a company, means the principles, bases, conventions, rules and practices that the company applies in preparing and presenting its financial statements,”
  - (b) after the definition of “equity instrument” insert—

““fair value” has the meaning it has for accounting purposes,”
  - (c) after the definition of “release debit” insert—

““relevant contract” has the same meaning as in Part 7 (see section 577),”
  - (d) in the definition of “tax advantage”, for “has” substitute “, except in the expression “loan-related tax advantage”, has ”.
- 56 Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.
- 57 In section 521F (shares becoming or ceasing to be shares to which section 521B applies)—
- (a) in subsection (3), for “its carrying value in” substitute “ its tax-adjusted carrying value based on ”, and
  - (b) omit subsection (4).
- 58 In section 540 (manufactured interest treated as interest under loan relationship), in subsection (3), omit “, including, in particular, section 307(3)”.

**Changes to legislation:**

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