

SCHEDULES

SCHEDULE 4

AVOIDANCE INVOLVING PROFIT FRAGMENTATION ARRANGEMENTS

Tax mismatch

- 5 (1) The material provision results in a tax mismatch for a tax period of the resident party if—
- (a) in that period, in relation to a relevant tax, it results in one or both of—
 - (i) an increase in the expenses of the resident party for which a deduction is taken into account in calculating the amount of the relevant tax payable by the resident party, or
 - (ii) a reduction in the income of the resident party which would otherwise have been taken into account in calculating the amount of the relevant tax payable by the resident party,
 - (b) it is reasonable to conclude that—
 - (i) the resulting reduction in the amount of the relevant tax which is payable by the resident party exceeds the resulting increase in relevant taxes payable by the overseas party for the period corresponding to the tax period, and
 - (ii) the overseas party does not meet the 80% payment test, and
 - (c) the results described in paragraphs (a) and (b)(i) are not exempted by sub-paragraph (5).
- (2) In this Schedule references to “the tax reduction” are to the amount of the excess mentioned in sub-paragraph (1)(b)(i).
- (3) It does not matter whether the tax reduction results from the application of different rates of tax, the operation of a relief, the exclusion of any amount from a charge to tax, or otherwise.
- (4) “The 80% payment test” is met by the overseas party if the resulting increase in relevant taxes paid by that party as mentioned in sub-paragraph (1)(b)(i) is at least 80% of the amount of the resulting reduction in the amount of the relevant tax payable by the resident party.
- (5) The results described in sub-paragraph (1)(a) and (b)(i) are exempted if they arise solely by reason of—
- (a) contributions paid by an employer under a registered pension scheme, or overseas pension scheme, in respect of any individual,
 - (b) a payment to a charity,
 - (c) a payment to a person who, on the ground of sovereign immunity, cannot be liable for any relevant tax, or
 - (d) a payment to an offshore fund or authorised investment fund—

Status: This is the original version (as it was originally enacted).

- (i) which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect), or
 - (ii) at least 75% of the investors in which are, throughout the accounting period, registered pension schemes, overseas pension schemes, charities or persons who cannot be liable for any relevant tax on the ground of sovereign immunity.
- (6) In this paragraph and paragraph 6, where the overseas party does not have an actual period for the purposes of relevant taxes which coincides with the tax period of the resident party—
 - (a) references to the corresponding period of the overseas party in relation to that tax period are to a notional period of that party for the purposes of relevant taxes that would coincide with that tax period, and
 - (b) such apportionments as are just and reasonable are to be made to determine the income or tax liability of that party for that corresponding period.
- (7) In this paragraph—
 - “relevant tax” means—
 - (a) income tax,
 - (b) corporation tax on income,
 - (c) a sum chargeable under section 269DA of CTA 2010 (surcharge on banking companies) as if it were an amount of corporation tax,
 - (d) a sum chargeable under section 330(1) of CTA 2010 (supplementary charge in respect of ring fence trades as if it were an amount of corporation tax), or
 - (e) any non-UK tax on income, and
 - “tax period”, in relation to a resident party, means—
 - (a) a tax year, or
 - (b) if the resident party is a company, an accounting period of that party.