

SCHEDULES

SCHEDULE 3

CORPORATION TAX: THE NON-CORPORATE DISTRIBUTION RATE: SUPPLEMENTARY PROVISIONS

PART 2

ALLOCATION OF EXCESS NCDs TO OTHER COMPANIES

Allocation of excess NCDs to other companies

- 6 (1) This Part of this Schedule provides for the allocation to other companies of any amount by which the total amount of the non-corporate distributions made (or treated as made) by a company (the “distributing company”) in an accounting period (the “distribution period”) exceeds the amount of the company’s basic profits for that period that are matched under paragraph 5.
- (2) That amount is referred to in this Schedule as “excess NCDs”.
- (3) A company to which an amount of excess NCDs is allocated (a “recipient company”) is treated as if it had made a non-corporate distribution of that amount in the period to which it is allocated.

Allocation of excess NCDs to other group companies

- 7 (1) If at the end of the distribution period the distributing company is a member of a group, excess NCDs must be allocated, so far as possible, to the other group companies.

The allocation must be made in accordance with the following rules.

- (2) Excess NCDs may not be allocated to a recipient company unless it has available profits for the accounting period to which they are to be allocated.
- (3) The amount of a recipient company’s available profits for an accounting period is given by:

$$BP - NCD$$

where—

BP is the amount of that company’s basic profits for that accounting period, and
NCD is the total amount of non-corporate distributions made (or treated as made) by that company in that period.

- (4) The maximum amount of excess NCDs that may be allocated to an accounting period of a recipient company is:

$$\left(\frac{\text{NCD}}{\text{D}} \right) \times \text{AP}$$

where—

NCD is the total amount of the non-corporate distributions made (or treated as made) by the distributing company in the distribution period;

D is the total amount of all the distributions made (or treated as made) by that company in that period; and

AP is the amount of the recipient company's available profits for that period.

- (5) In determining the amount of a company's available profits at any time account shall only be taken of excess NCDs allocated to it by virtue of an allocation made before that time that remains (or so far as it remains) effective.

Allocation of excess NCDs: period or periods to which amount to be allocated

- 8 (1) Excess NCDs falling to be allocated to another company under paragraph 7 (allocation to other group companies) may be allocated to any accounting period identified by this paragraph as a corresponding accounting period.

If there is more than one such period, excess NCDs must be allocated to the first to the full extent possible before any allocation is made to the second, and so on.

- (2) The accounting period of a recipient company that includes the last day of the distribution period is its first corresponding accounting period.

Unless that accounting period is shorter than the distribution period, it is the recipient company's only corresponding accounting period.

- (3) If the first corresponding accounting period is shorter than the distribution period, any subsequent accounting period of the recipient company beginning before the end of the period specified in sub-paragraph (4) is a corresponding accounting period.

- (4) The period referred to in sub-paragraph (3) is a period—

- (a) of the same length as the distribution period, and
- (b) beginning on the same day as the recipient company's first corresponding accounting period.

Allocation of excess NCDs: degrouping

- 9 (1) This paragraph applies where a company ("company A") ceases to be a member of the same group as another company ("company B") but the companies remain under the control of the same person or persons.

This is referred to below as "degrouping".

- (2) If at the end of any accounting period of company A ending on or after the degrouping but no more than two years after the degrouping—

- (a) company A has excess NCDs that (apart from this paragraph) cannot be allocated to other companies,
- (b) the business activities of company A and any other companies in the same group as that company are negligible, and
- (c) the business activities of company B and any other companies in the same group as that company are not negligible,

the provisions of sub-paragraphs (3) to (5) below apply.

The end of the accounting period when the above conditions are met is referred to in those provisions as “the relevant time”.

- (3) Company B and any other companies in the same group as that company at the relevant time (the “B group”) shall be treated for the purposes of allocating the excess NCDs as if they were members of the same group as company A.
- (4) Any excess NCDs remaining after any allocation made by virtue of sub-paragraph (3) must be allocated—
 - (a) to company B or, if different, the company in the B group that at the relevant time has the greatest number of members who are not companies, and
 - (b) to the accounting period of that company that includes the relevant time.

This allocation is not subject to the restrictions in paragraph 7 on the amount that may be allocated to another company.

- (5) If there is more than one company answering the description in sub-paragraph (4)
 - (a), the excess NCDs shall be apportioned between them according to the amount of their basic profits for the accounting period to which the amount falls to be allocated.
- (6) In this paragraph “control” shall be construed in accordance with section 416(2) to (6).

Allocation of excess NCDs: procedure

- 10 (1) The basic rule is that the allocation of excess NCDs to another company must be made by the distributing company with the agreement of the recipient company.
- (2) If excess NCDs are not so allocated within nine months after—
 - (a) in a case within paragraph 7, the end of the distribution period, or
 - (b) in a case within paragraph 9, the relevant time within the meaning of that paragraph,they may be allocated at any time thereafter by an officer of the Board.
- (3) An allocation under sub-paragraph (1) or (2) may be varied—
 - (a) by agreement between the relevant companies, or
 - (b) if further excess NCDs are required to be allocated and no variation is agreed within one year after its becoming apparent that a variation is required, by an officer of the Board.

Any such variation may in turn be varied as mentioned in paragraph (a) or (b).

- (4) No allocation or variation of an allocation of excess NCDs may be made after the end of the period of one year after whichever of the following last occurs—
 - (a) the final determination of the tax affairs of the distributing company in relation to the distribution period,
 - (b) in a case within paragraph 7, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods that are or could be corresponding accounting periods, or
 - (c) in a case within paragraph 9, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods to which an allocation may be made under that paragraph.

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

- (5) If circumstances arise as a result of which the tax affairs of any such company for any such period are reopened, an allocation or variation of an allocation may (and shall if necessary) be made at any time before the end of the period of one year after the tax affairs of the company are again finally determined.
- (6) For the purposes of sub-paragraphs (4) and (5) the tax affairs of a company for a period are finally determined when the amounts are conclusively determined within the meaning of paragraph 88 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: conclusiveness of amounts stated in return).
- (7) References in this paragraph to variation of an allocation include reducing the amount allocated to nil.

Allocation of excess NCDs: amounts proving to be excessive

- 11 (1) This paragraph applies where an amount of excess NCDs allocated to another company in accordance with this Part of this Schedule later proves to be excessive.
- (2) The excess shall revert to the distributing company.
- (3) If allocations to two or more companies are involved, the amounts shall revert in the opposite order to that in which the allocations were made.
- (4) In the case of allocations made at the same time, the amounts reverting to the distributing company shall be in proportion to the original allocations.

Allocation of excess NCDs to companies not resident in the United Kingdom

- 12 (1) The provisions of this Part of this Schedule as to the allocation of excess NCDs to other companies apply, with any necessary modifications, to companies that are not resident in the United Kingdom as they apply to companies that are so resident.
- (2) In particular, references to the company's basic profits and accounting periods shall be read in relation to a company that is not resident in the United Kingdom as references to what would have been the case if the company had been resident in the United Kingdom at all material times.