

SCHEDULES

SCHEDULE 5

Section 30

PROVISION NOT AT ARM'S LENGTH: RELATED AMENDMENTS

Taxes Management Act 1970

Notice of enquiry

- 1 (1) Section 9A of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) For subsection (4) (scope of inquiry) substitute—
 - “(4) An enquiry extends to—
 - (a) anything contained in the return, or required to be contained in the return, including any claim or election included in the return,
 - (b) consideration of whether to give the taxpayer a transfer pricing notice under paragraph 5C of Schedule 28AA to the principal Act (provision not at arm's length: medium-sized enterprise),but this is subject to the following limitation.”.

Income and Corporation Taxes Act 1988

Valuation of trading stock at discontinuance of trade

- 2 (1) Section 100 of the Taxes Act 1988 is amended as follows.
- (2) After subsection (1) insert—
 - “(1ZA) This section does not apply in relation to any trading stock if paragraph 1(2) of Schedule 28AA (provision not at arm's length) has effect in relation to any provision made or imposed in relation to that stock and having effect in connection with the discontinuance of the trade.”.

Petroleum extraction activities: ring fence trade: charges on income

- 3 (1) Section 494 of the Taxes Act 1988 (charges on income) is amended as follows.
- (2) In subsection (2) (which restricts the loan relationship debits that may be brought into account in a manner resulting in reduction of ring fence profits)—
 - (a) at the end of paragraph (b) insert “and”;
 - (b) omit paragraph (d) (which imposes a restriction by reference to a reasonable commercial rate of return and is superseded by the application of paragraphs 1A and 1B of Schedule 28AA to the Taxes Act 1988 by virtue of paragraph 11 of that Schedule);

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- (c) omit the third sentence (which defines “net debit” for the purposes of paragraph (d)).
- (3) Omit subsection (2B) (which relates to the net debit within the meaning of subsection (2)(d)).

Assumptions for calculating chargeable profits etc: transfer pricing

- 4 In Schedule 24 to the Taxes Act 1988, paragraph 20 shall cease to have effect.

Finance Act 1996

Loan relationships: introductory

- 5 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

Transactions not at arm's length

- 6 (1) Paragraph 11 is amended as follows.
 - (2) In sub-paragraph (1) (which is expressed to be subject to sub-paragraphs (2) to (3A)) for “(2)” substitute “(1A)”.
 - (3) After sub-paragraph (1) insert—
 - “(1A) Notwithstanding section 80(5) of this Act, sub-paragraph (1) above shall not apply to debits or credits in respect of amounts which—
 - (a) fall to be adjusted for tax purposes under Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), or
 - (b) fall within that Schedule without falling to be so adjusted.
 - (1B) For the purposes of sub-paragraph (1A) above, an amount falls within Schedule 28AA to the Taxes Act 1988 without falling to be adjusted under that Schedule in a case where—
 - (a) the conditions in paragraph 1(1) of that Schedule are met, and
 - (b) the actual provision does not differ from the arm's length provision.”.

Continuity of treatment: groups etc.

- 7 (1) Paragraph 12 is amended as follows.
 - (2) After sub-paragraph (2) insert—
 - “(2ZA) Where the debits or credits to be brought into account for the purposes of this Chapter in respect of any amounts fall to be determined in accordance with sub-paragraph (2) above, Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to those amounts.”.

Amounts imputed under Schedule 28AA to the Taxes Act 1988

- 8 For paragraph 16 (imputed interest) substitute—

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“Amounts imputed under Schedule 28AA to the Taxes Act 1988

- 16 (1) This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), an amount falls to be treated as any of the following—
- (a) an amount of profits, gains or losses (whether or not of a capital nature) arising to a company from any of its loan relationships or related transactions;
 - (b) interest payable under any of a company's loan relationships;
 - (c) charges or expenses incurred by a company under or for the purposes of any of its loan relationships or related transactions.
- (2) That Schedule shall have effect, notwithstanding the provisions of any authorised accounting method, so as to require credits or debits relating to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—
- (a) profits, gains or losses (whether or not of a capital nature) arising to the company from the loan relationship or related transaction,
 - (b) interest accruing or becoming due and payable under the loan relationship, or
 - (c) charges or expenses incurred under or for the purposes of the loan relationship or related transaction,
- as the case may be.”.

Finance Act 1998

Introductory

9 The Finance Act 1998 (c. 36) is amended as follows.

Scope of enquiry

10 (1) In Schedule 18 (company tax returns, assessments and related matters) paragraph 25 is amended as follows.

(2) In sub-paragraph (1), for the words following paragraph (b) substitute—

“and also extends to consideration of whether to give the company a transfer pricing notice under paragraph 5C of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length: medium-sized enterprise).

But this is subject to the following limitation.”.

Finance Act 2000

Introductory: tonnage tax: transactions not at arm's length

11 Schedule 22 to the Finance Act 2000 (c. 17) (tonnage tax) is amended as follows.

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Transactions between tonnage tax company and another person

- 12 (1) Paragraph 58 is amended as follows.
- (2) In sub-paragraph (1) (Schedule 28AA to the Taxes Act 1988 to apply with certain omissions) for the words following paragraph (b) substitute—
- “Schedule 28AA to the Taxes Act 1988 (transactions not at arm's length) has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc).”.

Transactions between tonnage tax trade and other activities of same company

- 13 (1) Paragraph 59 is amended as follows.
- (2) For sub-paragraph (2) (Schedule 28AA to the Taxes Act 1988 to apply with certain omissions) substitute—
- “(2) As applied by sub-paragraph (1), Schedule 28AA has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc).”.

Finance Act 2002

Introductory

- 14 The Finance Act 2002 (c. 23) is amended as follows.

Derivative contracts

- 15 (1) Schedule 26 (derivative contracts) is amended as follows.
- (2) In Part 6 (special computational provisions) in paragraph 28 (transactions within groups) after sub-paragraph (3) insert—
- “(3A) Where the debits or credits to be brought into account for the purposes of this Schedule in respect of any amounts fall to be determined in accordance with sub-paragraph (3), Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to those amounts.”.
- (3) After paragraph 31 insert—

“Amounts imputed under Schedule 28AA to the Taxes Act 1988

- 31A (1) This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), an amount falls to be treated as any of the following—
- (a) an amount of profits or losses (disregarding any charges or expenses) arising to a company from any of its derivative contracts or related transactions;
 - (b) charges or expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.
- (2) That Schedule shall have effect, notwithstanding the provisions of any authorised accounting method, so as to require credits or debits relating

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to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—

- (a) profits or losses (disregarding any charges or expenses) arising to the company from the derivative contract or related transaction, or
 - (b) charges or expenses incurred under or for the purposes of the derivative contract or related transaction,
- as the case may be.”.

Intangible fixed assets

- 16 (1) Schedule 29 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 55 (transfers within a group), after sub-paragraph (1) insert—
- “(1A) Where this paragraph applies in relation to the transfer of an asset, Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) does not apply in relation to the transfer.”.
- (3) In paragraph 92 (transfer between company and related party treated as being at market value) in sub-paragraph (3) (cases where consideration for transfer falls within Schedule 28AA without falling to be adjusted)—
- (a) at the end of paragraph (a) insert “, but”,
 - (b) at the end of paragraph (b) omit “, and”,
 - (c) omit paragraph (c) (which refers to paragraph 5(2) of Schedule 28AA to the Taxes Act 1988).