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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Paragraph 5. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 4

#### CHARGEABLE GAINS: LOCATION OF ASSETS ETC

##### PART 1

##### LOCATION OF ASSETS

##### *Location of certain intangible assets*

5 After section 275 of TCGA 1992 insert—

##### **“275A Location of certain intangible assets**

- (1) This section applies for the purpose of determining whether the situation of an intangible asset (“asset A”) is in the United Kingdom if the situation of asset A is not otherwise determined (see section 275B(1)).
- (2) In this section “intangible asset” means—
  - (a) intangible or incorporeal property and includes a thing in action, or
  - (b) anything that under the law of a country or territory outside the United Kingdom corresponds or is similar to intangible or incorporeal property or a thing in action.
- (3) If asset A is subject to UK law (see section 275B(2)) at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (4) Subsections (5) to (9) below have effect if asset A—
  - (a) is a future or option (see section 275B(3)), and
  - (b) is not subject to UK law at the time it is created.
- (5) If, as a result of the application of the rule in subsection (6) below in relation to asset A or any other asset or assets, asset A falls to be treated as being subject to UK law at the time it is created, it shall be taken for the purposes of this Act to be situated in the United Kingdom at all times.
- (6) That rule is that where, in the case of any intangible asset,—
  - (a) the asset is a future or option,
  - (b) the underlying subject matter (see section 275B(4)) of the asset consists of or includes an asset which is an intangible asset, and
  - (c) either—
    - (i) that intangible asset is subject to UK law at the time it is created and, on the assumption that there were no rights

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or interests in or over that asset, the situation of that asset would not be otherwise determined, or

- (ii) that intangible asset is treated by this subsection as being so subject at that time,

the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (5) above and this subsection as being so subject at the time it is created.

(7) If—

- (a) asset A is not taken to be situated in the United Kingdom by virtue of subsection (5) above, and
- (b) as a result of the application of the rule in subsection (8) below in relation to asset A or any other asset or assets, asset A falls to be treated as being situated in the United Kingdom at any time,

it shall be taken for the purposes of this Act to be situated in the United Kingdom at that time.

(8) That rule is that where, in the case of any intangible asset,—

- (a) the asset is a future or option, and
- (b) the underlying subject matter of the asset consists of or includes an asset—
  - (i) which is, by virtue of subsection (9) below or of any provision of this Act apart from this section, situated in the United Kingdom at any time, or
  - (ii) which is treated by this subsection as being so situated at any time,

the intangible asset mentioned in paragraph (a) above is to be treated for the purposes of subsection (7) above and this subsection as being so situated at that time.

(9) Where—

- (a) the underlying subject matter of a future or option consists of or includes shares or debentures issued by a company incorporated in any part of the United Kingdom, but
- (b) at the time the future or option is created, those shares or debentures have not been issued,

the underlying subject matter of the future or option, so far as consisting of or including those shares or debentures, is to be taken, for the purposes of subsection (8) above, to consist of or include an asset which is situated in the United Kingdom at all times.

### **275B Section 275A: supplementary provisions**

(1) For the purposes of section 275A, the situation of an asset is not otherwise determined if, apart from that section, this Act does not make any provision for determining—

- (a) the situation of the asset, or
- (b) whether the situation of the asset is in the United Kingdom.

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- (2) For the purposes of section 275A, an intangible asset is subject to UK law at a particular time if any right or interest which comprises or forms part of the asset is, at that time,—
  - (a) governed by, or otherwise subject to, or
  - (b) enforceable under,  
the law of any part of the United Kingdom.
- (3) Sub-paragraphs (6) to (10) of paragraph 12 of Schedule 26 to the Finance Act 2002 (meaning of “future” and “option”) apply for the purposes of section 275A as they apply for the purposes of Part 2 of that Schedule.
- (4) For the purposes of section 275A—
  - (a) the underlying subject matter of a future is the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and
  - (b) the underlying subject matter of an option is the property which would fall to be delivered if the option were exercised.
- (5) Section 275A is subject to section 275C (location of assets: interests of co-owners).
- (6) This section is to be construed as one with section 275A.”.

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