

## SCHEDULES

### SCHEDULE 8

Section 40

#### FINANCING OF COMPANIES ETC: TRANSFER PRICING AND LOAN RELATIONSHIPS

##### *Amendments of Schedule 28AA to ICTA*

- 1 (1) Schedule 28AA to ICTA (provision not at arm's length) is amended as follows.
- (2) In paragraph 4 (participation in the management, control or capital of a person), in sub-paragraph (2) (meaning of indirect participation) for “and only if” substitute “and (subject to paragraphs 4A and 6(4C) below) only if”.
- (3) After that paragraph insert—

##### *“Persons acting together in relation to financing arrangements*

- 4A (1) A person (“P”) shall be treated for the purposes of paragraph 1(1)(b)(i) above (but subject to sub-paragraph (7) below) as indirectly participating in the management, control or capital of another (“A”) at the time of the making or imposition of the actual provision if—
- (a) the actual provision relates, to any extent, to financing arrangements for A;
  - (b) A is a body corporate or partnership;
  - (c) P and other persons acted together in relation to the financing arrangements; and
  - (d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c) above.
- (2) A person (“Q”) shall be treated for the purposes of paragraph 1(1)(b)(ii) above (but subject to sub-paragraph (7) below) as indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—
- (a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons (“B”);
  - (b) B is a body corporate or partnership;
  - (c) Q and other persons acted together in relation to the financing arrangements; and
  - (d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c) above.
- (3) It is immaterial for the purposes of sub-paragraph (1)(c) or (2)(c) above whether P or Q and the other persons acting together in relation to the

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financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

- (4) In sub-paragraph (1)(d) or (2)(d) “relevant time” means—
- (a) a time when P or Q and the other persons were acting together in relation to the financing arrangements; or
  - (b) a time in the period of six months beginning with the day on which they ceased so to act.
- (5) In determining for the purposes of sub-paragraph (1)(d) or (2)(d) whether P or Q would be taken to have control of another person, the rights and powers of any person (and not just P or Q) shall be taken to include those that would be attributed to that person in determining under paragraph 4 above whether he is indirectly participating in the management, control or capital of the other person.
- (6) In this paragraph “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.
- (7) Where the condition in paragraph 1(1)(b) above would not be satisfied but for this paragraph, paragraph 1(2) above applies only to the extent that the actual provision relates to the financing arrangements in question.”.

- (4) After the paragraph inserted by sub-paragraph (3) above insert—

*“Financing arrangements: anticipatory provision*

- 4B (1) To the extent that it applies to provision relating to financing arrangements, this Schedule has effect as if in paragraph 1(1)(b) above the words “or within the period of six months beginning with the day on which the actual provision was made or imposed” were inserted immediately before sub-paragraph (i).
- (2) In this paragraph “financing arrangements” has the same meaning as in paragraph 4A above.”.

- (5) In paragraph 6 (elimination of double counting), after sub-paragraph (4) insert—

- “(4A) A claim by the disadvantaged person for the purposes of this paragraph shall not be made where—
- (a) the condition in paragraph 1(1)(b) above would not be satisfied but for paragraph 4A above;
  - (b) the actual provision is provision in relation to a security issued by one of the affected persons (“the issuer”);
  - (c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.

In this sub-paragraph “security” and “guarantee” have the same meaning as in paragraph 1A above.

- (4B) For the purposes of sub-paragraph (4A) above, the cases where one person has a “participatory relationship” with another are those where—

- (a) one of them is directly or indirectly participating in the management, control or capital of the other; or
- (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.

(4C) Paragraph 4A above applies for the purposes of sub-paragraph (4B) above as it applies for the purposes of paragraph 1(1)(b) above.”.

#### *Amendments of Schedule 9 to FA 1996*

2 (1) In Schedule 9 to FA 1996 (loan relationships: computational provisions), paragraph 2 (late interest) is amended as follows.

(2) In sub-paragraph (1B)—

- (a) omit “, but not a CIS-based close company,” and the words after paragraph (c);
- (b) in paragraph (a), at the end insert “or a person who controls a company which is such a participator”;
- (c) in paragraph (b), after “who is” insert “, or who controls a company which is,”;
- (d) for paragraph (c) substitute—
  - “(c) a company controlled by such a participator or by a person who controls a company which is such a participator, or
  - (d) a company in which such a participator has a major interest.”;
- (e) at the end insert—

“This is subject to sub-paragraph (1E).”.

(3) After sub-paragraph (1D) insert—

“(1E) A case does not fall within sub-paragraph (1B) above if either of the following exceptions applies.

(1F) The first exception applies where—

- (a) the debtor company is a CIS-based close company at all such times as are mentioned in sub-paragraph (1B) above;
- (b) the person standing in the position of a creditor as respects the loan relationship is not resident in a non-qualifying territory at any such time; and
- (c) the debtor company is a small or medium-sized enterprise for the relevant accounting period.

(1G) The second exception applies where—

- (a) the debt is one that is owed to, or to persons acting for, a CIS limited partnership;
- (b) no member of that partnership is resident in a non-qualifying territory at any time in the relevant accounting period;
- (c) the debtor company has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) above is satisfied; and

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(d) the debtor company is a small or medium-sized enterprise for the relevant accounting period.”.

(4) In sub-paragraph (6), at the appropriate places insert—

““non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to the Taxes Act 1988;”;

““resident” has the meaning given by paragraph 5B(6) of Schedule 28AA to the Taxes Act 1988;”;

““small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.”.

3 (1) Paragraph 18 of that Schedule (discounted securities of close companies) is amended as follows.

(2) In sub-paragraph (1), omit paragraphs (aa) and (c).

(3) In sub-paragraph (1)(b)—

(a) in sub-paragraph (i), at the end insert “or a person who controls a company which is such a participator”;

(b) in sub-paragraph (ii), after “an associate of” insert “a person who is, or who controls a company which is,”;

(c) for sub-paragraph (iii) substitute—

“(iii) a company controlled by such a participator or by a person who controls a company which is such a participator.”.

(4) After sub-paragraph (1) insert—

“(1ZA) But for any such accounting period this paragraph shall not apply in relation to that debtor relationship if any of the following exceptions applies.”.

(5) In sub-paragraph (1A), for the words before paragraph (a) substitute “The first exception applies where—”.

(6) After that sub-paragraph insert—

“(1B) The second exception applies where—

(a) the issuing company is a CIS-based close company;

(b) at all times in the period when there is such a person as is described in sub-paragraph (1)(b) above, that person is not resident in a non-qualifying territory; and

(c) the issuing company is a small or medium-sized enterprise for the period.

“(1C) The third exception applies where—

(a) the debt is one that is owed to, or to persons acting for, a CIS limited partnership;

(b) no member of that partnership is resident in a non-qualifying territory at any time in the period when there is such a person as is described in sub-paragraph (1)(b) above;

- (c) the debtor company has received written notice from the partnership containing information from which it appears that the condition in paragraph (b) above is satisfied; and
- (d) the issuing company is a small or medium-sized enterprise for the period.”.

(7) In sub-paragraph (4), at the appropriate places insert—

““CIS-based close company” and “CIS limited partnership” have the meaning given by paragraph 2(6) above;”;

““non-qualifying territory” has the meaning given by paragraph 5E of Schedule 28AA to the Taxes Act 1988;”;

““resident” has the meaning given by paragraph 5B(6) of Schedule 28AA to that Act;”;

““small or medium-sized enterprise” has the meaning given by paragraph 5D of that Schedule.”.

#### *Commencement and transitional provisions*

- 4 (1) Except where sub-paragraph (2) or (3) applies, the amendments made by this Schedule have effect in relation to accounting periods beginning on or after 4th March 2005.
- (2) As regards any actual provision that constitutes, or gives rise to, a debtor relationship entered into in pursuance of a contract—
- (a) made before 4th March 2005, and
  - (b) not varied after that date, or not varied until after that date,
- the amendments made by paragraph 1(2), (3) and (5) apply only in relation to accounting periods beginning on or after 1st April 2007 or, in a case where the contract is varied before 1st April 2007, in relation to accounting periods beginning on or after the date of the variation.
- (3) As regards a debtor relationship entered into in pursuance of a contract—
- (a) made before 4th March 2005, and
  - (b) not varied after that date, or not varied until after that date,
- the amendments made by paragraph 2(2)(a) and (e), (3) and (4) and paragraph 3(2) and (4) to (7) apply only in relation to accounting periods beginning on or after 1st April 2007 or, in a case where the contract is varied before 1st April 2007, in relation to accounting periods beginning on or after the date of the variation.
- (4) In the case of a company’s accounting period (“the straddling period”) that begins before and ends on or after a relevant date, for the purposes of sub-paragraph (1) or (where it applies) sub-paragraph (2) or (3) the amendments made by this Schedule have effect as if the straddling period consisted of—
- (a) one accounting period beginning with the straddling period and ending with the day before the relevant date, and
  - (b) a second accounting period beginning with the relevant date and ending with the straddling period,
- and the company’s profits and losses are to be computed accordingly for tax purposes.

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- (5) A reference in sub-paragraph (2) or (3) to a variation of a contract does not include a reference to a variation that does not affect the terms of the debtor relationship in question.
- (6) Sub-paragraph (3) is not to be read as allowing or requiring a debit to be brought into account under Chapter 2 of Part 4 of FA 1996 for an accounting period beginning on or after 1st April 2007, or the date of the variation, in respect of any amount of interest or discount in respect of which a debit is so brought into account for any earlier accounting period.
- (7) In the application of this paragraph to a person within the charge to income tax—
- (a) a reference to an accounting period is to be read as a reference to a period of account;
  - (b) a reference in sub-paragraph (4) to a company is to be read as a reference to such a person.
- (8) In this paragraph—
- “actual provision” has the same meaning as in Schedule 28AA to ICTA;
  - “debtor relationship”—
    - (a) in relation to a company, has the meaning given by section 103(1) of FA 1996;
    - (b) in relation to a person other than a company, has a corresponding meaning;  - “relevant date” means—
    - (a) 4th March 2005 for the purposes of sub-paragraph (1);
    - (b) 1st April 2007, or (as the case may be) the date of the variation, for the purposes of sub-paragraph (2) or (3).