

SCHEDULES

SCHEDULE 13

Section 47

SALE AND REPURCHASE OF SECURITIES

Purpose of Schedule

- 1 (1) The purpose of this Schedule is to secure that in the case of an arrangement—
 - (a) which involves the sale of securities and the subsequent purchase of securities, and
 - (b) which equates, in substance, to a transaction for the lending of money at interest from or to a company (with the securities which were sold as collateral for the loan),the charge to corporation tax in that case reflects the fact that the arrangement equates, in substance, to such a transaction.
- (2) But this is not to be read as preventing the rules in this Schedule about corporation tax in respect of chargeable gains from having no effect in relation to debtor quasi-repos and creditor quasi-repos.

Meaning of debtor repo

- 2 (1) For the purposes of this Schedule a company (“the borrower”) has a debtor repo if conditions A to E are met.
 - (2) Condition A is that under an arrangement the borrower receives from another person (“the lender”) any money or other asset (“the advance”).
 - (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the borrower for the period in which the advance is received record a financial liability in respect of the advance.
 - (4) Condition C is that under the arrangement the borrower sells any securities at any time to the lender.
 - (5) Condition D is that the arrangement makes provision conferring a right or imposing an obligation on the borrower to buy those or similar securities at any subsequent time.
 - (6) Condition E is that, in accordance with generally accepted accounting practice, the subsequent buying of those or similar securities would extinguish the financial liability in respect of the advance recorded in the accounts of the borrower.
 - (7) For the purposes of conditions A to E references to the borrower include a partnership of which the borrower is a member.

Status: This is the original version (as it was originally enacted).

Meaning of debtor quasi-repo

- 3 (1) For the purposes of this Schedule a company (“the borrower”) has a debtor quasi-repo in any case if—
- (a) the borrower does not have a debtor repo in that case, and
 - (b) conditions A to E are met in that case.
- (2) Condition A is that under an arrangement the borrower receives any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the borrower for the period in which the advance is received record a financial liability in respect of the advance.
- (4) Condition C is that under that or any other arrangement the borrower or any other person sells any securities at any time.
- (5) Condition D is that the arrangement or other arrangement—
- (a) makes provision conferring a right or imposing an obligation on the borrower to buy the securities or any other securities at any subsequent time, or
 - (b) makes provision conferring such a right or imposing such an obligation on any other person and makes other relevant provision.
- (6) For this purpose any arrangement makes “other relevant provision” if it makes provision—
- (a) for the receipt of any money or other asset from the borrower under that arrangement for the purpose of enabling the other person to make that subsequent purchase, or
 - (b) for the discharge of any liability to the borrower under that arrangement for that purpose (whether by way of set off or otherwise).
- (7) Condition E is that, in accordance with generally accepted accounting practice—
- (a) the subsequent buying of the securities or the other securities by the borrower, or
 - (b) the receipt of the asset from the borrower, or the discharge of the liability to the borrower, under the arrangement or other arrangement,
- would extinguish the financial liability in respect of the advance recorded in the accounts of the borrower.
- (8) For the purposes of conditions A to E references to the borrower include a partnership of which the borrower is a member.

Ignoring effect on borrower of sale of securities: debtor repos, debtor quasi-repos and other arrangements

- 4 (1) This paragraph applies if a company (“the borrower”)—
- (a) has a debtor repo or a debtor quasi-repo, or
 - (b) has a liability which is discharged under a relevant arrangement.
- (2) A relevant arrangement is one in relation to which conditions C and D in paragraph 3 are met and the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage.

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

- (3) For the purposes of the charge to corporation tax in respect of income of the borrower arising while the arrangement is in force, the Corporation Tax Acts have effect as if—
- (a) the borrower held the securities that are initially sold for any period for which the arrangement is in force, and
 - (b) the borrower did not receive in that period amounts representative of income payable in respect of those securities.
- (4) But—
- (a) no amount is to be charged to corporation tax as a result of sub-paragraph (3) (a) unless it is, in accordance with generally accepted accounting practice, recognised in determining the borrower’s profit or loss for that or any other period or taken into account in calculating the amounts which are so recognised, and
 - (b) there is the following exception to sub-paragraph (3) if the securities that are initially sold are overseas securities.
- (5) In the case of any overseas dividend payable in respect of those securities, the entitlement of the borrower to double taxation relief in respect of that dividend is determined as if—
- (a) sub-paragraph (3) were omitted,
 - (b) the borrower received a payment of an amount which is representative of that dividend,
 - (c) the payment were made under a requirement of the arrangement, and
 - (d) the payment were made on the date on which that dividend is payable.
- (6) For the purposes of this paragraph “double taxation relief” means any relief given under or as a result of Part 18 of ICTA.

Relief for borrower for finance charges in respect of the advance: debtor repos and debtor quasi-repos

- 5 (1) This paragraph applies if a company (“the borrower”) has a debtor repo or a debtor quasi-repo.
- (2) The advance under the debtor repo or debtor quasi-repo is, in the case of the borrower, to be treated for the purposes of the loan relationship rules as a money debt which—
- (a) is owed by the borrower or, if the borrower is a member of a partnership which receives the advance, by the partnership, and
 - (b) is owed to the person to whom the securities are initially sold.
- (3) The arrangement is, in the case of the borrower, to be treated for the purposes of those rules as a transaction for the lending of money from which that debt is treated as arising for those purposes.
- (4) Any amount which, in accordance with generally accepted accounting practice, is recorded in—
- (a) the accounts of the borrower, or
 - (b) if the borrower is a member of a partnership which receives the advance, the accounts of the partnership,
- as a finance charge in respect of the advance is to be treated for the purposes of the loan relationship rules and Part 15 of ITA 2007 (deduction of income tax at source) as interest payable under that debt.

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- (5) That interest is to be treated for those purposes as paid at the earlier of—
 - (a) the time when the relevant repurchase takes place, and
 - (b) the time when it becomes apparent that that repurchase will not take place.
- (6) For this purpose “the relevant repurchase” means—
 - (a) if the borrower has a debtor repo, the subsequent buying of the securities or similar securities, and
 - (b) if the borrower has a debtor quasi-repo, the subsequent buying of the securities or other securities by the borrower, the receipt of the asset from the borrower or (as the case may be) the discharge of the liability to the borrower.

Ignoring sale and subsequent purchase for purposes of chargeable gains: debtor repos

- 6 (1) This paragraph applies if—
 - (a) a company (“the borrower”) has a debtor repo, and
 - (b) the borrower (having sold the securities under the arrangement to the lender) is the only person with the right or obligation under the arrangement to buy those or similar securities at any subsequent time.
- (2) The sale of the securities, and the subsequent purchase of those or similar securities, by the borrower under the arrangement are to be ignored for the purposes of corporation tax in respect of chargeable gains (but see sub-paragraph (5)).
- (3) If at any time after the initial sale of the securities—
 - (a) it becomes apparent that the borrower will not subsequently buy those or similar securities under the arrangement, or
 - (b) the accounting condition ceases to be met,
 the borrower is to be treated for the purposes of corporation tax in respect of chargeable gains as disposing of the securities at that time for a consideration equal to their market value at that time.
- (4) The accounting condition ceases to be met if, in accordance with generally accepted accounting practice, the accounts of the borrower for any period after the one in which the advance is received do not record a financial liability in respect of the advance (except as a result of the subsequent purchase of the securities or similar securities).
- (5) If sub-paragraph (3) applies because the accounting condition ceases to be met, any subsequent purchase of those or similar securities by the borrower under the arrangement is not to be ignored for the purposes of corporation tax in respect of chargeable gains as a result of this paragraph.
- (6) For the purposes of this paragraph references to the borrower include a partnership of which the borrower is a member.

Meaning of creditor repo

- 7 (1) For the purposes of this Schedule a company (“the lender”) has a creditor repo if conditions A to E are met.
- (2) Condition A is that under an arrangement another person (“the borrower”) receives from the lender any money or other asset (“the advance”).

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- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the lender for the period in which the advance is made record a financial asset in respect of the advance.
- (4) Condition C is that under the arrangement the borrower sells any securities at any time to the lender.
- (5) Condition D is that the arrangement makes provision conferring a right or imposing an obligation on the lender to sell those or similar securities at any subsequent time.
- (6) Condition E is that, in accordance with generally accepted accounting practice, the subsequent sale of those or similar securities would extinguish the financial asset in respect of the advance recorded in the accounts of the lender.
- (7) For the purposes of conditions A to E references to the lender include a partnership of which the lender is a member.

Meaning of creditor quasi-repo

- 8 (1) For the purposes of this Schedule a company (“the lender”) has a creditor quasi-repo in any case if—
- (a) the lender does not have a creditor repo in that case, and
 - (b) conditions A to E are met in that case.
- (2) Condition A is that under an arrangement another person receives from the lender any money or other asset (“the advance”).
- (3) Condition B is that, in accordance with generally accepted accounting practice, the accounts of the lender for the period in which the advance is made record a financial asset in respect of the advance.
- (4) Condition C is that under that or any other arrangement a person sells any securities at any time to the lender or any other person.
- (5) Condition D is that the arrangement or other arrangement—
- (a) makes provision conferring a right or imposing an obligation on the lender to sell the securities or any other securities at any subsequent time, or
 - (b) makes provision conferring such a right or imposing such an obligation on any other person and makes other relevant provision.
- (6) For this purpose any arrangement makes “other relevant provision” if it makes provision—
- (a) for the receipt of any money, securities or other asset from the lender under that arrangement for the purpose of enabling the other person to make that subsequent sale, or
 - (b) for the discharge of any liability to the lender under that arrangement for that purpose (whether by way of set off or otherwise).
- (7) Condition E is that, in accordance with generally accepted accounting practice—
- (a) the subsequent sale of the securities or the other securities by the lender, or
 - (b) the receipt of the asset from the lender, or the discharge of the liability to the lender, under the arrangement or other arrangement,
- would extinguish the financial asset in respect of the advance recorded in the accounts of the lender.

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

- (8) For the purposes of conditions A to E references to the lender include a partnership of which the lender is a member.

Ignoring effect on lender of sale of securities: creditor repos and creditor quasi-repos

- 9 (1) This paragraph applies if a company (“the lender”) has a creditor repo or a creditor quasi-repo.
- (2) For the purposes of the charge to corporation tax in respect of income of the lender arising while the arrangement is in force, the Corporation Tax Acts have effect as if—
- (a) the lender did not hold the securities that are initially sold for any period for which the arrangement is in force, and
 - (b) the lender did not make in that period any payment representative of income payable in respect of those securities.
- (3) But—
- (a) an amount is not to be ignored for the purposes of that charge as a result of sub-paragraph (2)(a) if it is, in accordance with generally accepted accounting practice, recognised in determining the lender’s profit or loss for that or any other period or taken into account in calculating the amounts which are so recognised, and
 - (b) a payment is not to be ignored for those purposes as a result of sub-paragraph (2)(b) if the payment is, in accordance with that practice, so recognised.
- (4) Nothing in sub-paragraph (3)(b) affects the question whether (apart from that provision) the payment (or any part of it) may be deducted in calculating any income for corporation tax purposes or against total profits.

Charge on lender for finance return in respect of the advance: creditor repos and creditor quasi-repos

- 10 (1) This paragraph applies if a company (“the lender”) has a creditor repo or a creditor quasi-repo.
- (2) The advance under the creditor repo or creditor quasi-repo is, in the case of the lender, to be treated for the purposes of the loan relationship rules as a money debt which—
- (a) is owed to the lender or, if the lender is a member of a partnership which makes the advance, to the partnership, and
 - (b) is owed by the person who initially sold the securities.
- (3) The arrangement is, in the case of the lender, to be treated for the purposes of those rules as a transaction for the lending of money from which that debt is treated as arising for those purposes.
- (4) Any amount which, in accordance with generally accepted accounting practice, is recorded in—
- (a) the accounts of the lender, or
 - (b) if the lender is a member of a partnership which makes the advance, the accounts of the partnership,
- as a finance return in respect of the advance is to be treated for those purposes as interest receivable under that debt.

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- (5) That interest is to be treated for those purposes as received at the earlier of—
 - (a) the time when the relevant repurchase takes place, and
 - (b) the time when it becomes apparent that that repurchase will not take place.
- (6) For this purpose “the relevant repurchase” means—
 - (a) if the lender has a creditor repo, the subsequent sale of the securities or similar securities, and
 - (b) if the lender has a creditor quasi-repo, the subsequent sale of the securities or other securities by the lender, the receipt of the asset from the lender or (as the case may be) the discharge of the liability to the lender.

Ignoring purchase and subsequent sale for purposes of chargeable gains: creditor repos

- 11 (1) This paragraph applies if—
- (a) a company (“the lender”) has a creditor repo, and
 - (b) the lender (having bought the securities under the arrangement from the borrower) is the only person with the right or obligation under the arrangement to sell those or similar securities at any subsequent time.
- (2) The purchase of the securities, and the subsequent sale of those or similar securities, by the lender under the arrangement are to be ignored for the purposes of corporation tax in respect of chargeable gains (but see sub-paragraph (5)).
- (3) If at any time after the initial purchase of the securities—
- (a) it becomes apparent that the lender will not subsequently sell those or similar securities under the arrangement, or
 - (b) the accounting condition ceases to be met,
- the lender is to be treated for the purposes of corporation tax in respect of chargeable gains as acquiring the securities at that time for a consideration equal to their market value at that time.
- (4) The accounting condition ceases to be met if, in accordance with generally accepted accounting practice, the accounts of the lender for any period after the one in which the advance is made do not record a financial asset in respect of the advance (except as a result of the subsequent sale of the securities or similar securities).
- (5) If sub-paragraph (3) applies because the accounting condition ceases to be met, any subsequent sale of those or similar securities by the lender under the arrangement is not to be ignored for the purposes of corporation tax in respect of chargeable gains as a result of this paragraph.
- (6) For the purposes of this paragraph references to the lender include a partnership of which the lender is a member.

Repo under arrangement designed to produce quasi-interest: anti-avoidance

- 12 (1) This paragraph applies if—
- (a) under an arrangement a person receives any money or other asset (“the advance”) from a company (or a partnership of which the company is a member),
 - (b) the company does not have a creditor repo or creditor quasi-repo by reference to the arrangement but would have one on the applicable accounting

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- assumption (reading condition E in paragraphs 7 and 8 in the light of that assumption),
- (c) the arrangement is designed to produce a return (“the quasi- interest”) to the company (or partnership of which it is a member) which equates, in substance, to the return on an investment of money at interest, and
 - (d) the main purpose, or one of the main purposes, of the arrangement is the obtaining of a tax advantage.
- (2) Paragraph 10 is to have effect as if—
- (a) the company had a creditor repo by reference to the arrangement, and
 - (b) the quasi-interest were an amount recorded as mentioned in sub-paragraph (4) of that paragraph.
- (3) In this paragraph “the applicable accounting assumption” is the assumption that, in accordance with generally accepted accounting practice, the accounts of the company (or the partnership of which it is a member) for the period in which the advance is made record a financial asset in respect of the advance.

Requirements to deduct tax from manufactured payments: creditor repos and debtor repos

- 13 (1) If a company has a creditor repo, Chapter 9 of Part 15 of ITA 2007 (deduction of income tax at source: manufactured payments) has effect in relation to the lender while the arrangement is in force as if—
- (a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,
 - (b) the payments were made under requirements of the arrangement, and
 - (c) the payments were made on the dates on which the income is payable.
- (2) If a company has a debtor repo, the reverse charge provisions of Chapter 9 of Part 15 of ITA 2007 have effect in relation to the borrower while the arrangement is in force as if—
- (a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,
 - (b) the payments were made under requirements of the arrangements, and
 - (c) the payments were made on the dates on which the income is payable.
- (3) If sub-paragraph (1) or (2) applies, any payment actually made under an arrangement which is representative of any income payable on any securities is to be treated for the purposes of Chapter 9 of Part 15 of ITA 2007 as if it had not been made.
- (4) In this paragraph “the reverse charge provisions of Chapter 9 of Part 15 of ITA 2007” means—
- (a) regulations under section 918(4) of ITA 2007 (manufactured dividends on UK shares (Real Estate Investment Trusts): the reverse charge),
 - (b) section 920 of that Act (foreign payers of manufactured interest: the reverse charge), and
 - (c) section 923 of that Act (foreign payers of manufactured overseas dividends: the reverse charge).

Interpretation etc

- 14 (1) In this Schedule—

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“arrangement” includes any agreement or understanding (whether or not legally enforceable),

“creditor quasi-repo” has the meaning given by paragraph 8,

“creditor repo” has the meaning given by paragraph 7,

“debtor quasi-repo” has the meaning given by paragraph 3,

“debtor repo” has the meaning given by paragraph 2,

“discharge”, in relation to a liability, means the discharge of the liability in whole or in part (and “discharged” is to be read accordingly),

“the loan relationship rules” means the provisions of Chapter 2 of Part 4 of FA 1996,

“market value” has the same meaning as in TCGA 1992,

“overseas dividend”, in relation to overseas securities, means any interest, dividend or other annual payment payable in respect of the securities,

“overseas securities” means shares, stock or other securities issued by—

(a) a government or public or local authority of a territory outside the United Kingdom, or

(b) any other body of persons not resident in the United Kingdom,

“securities” (except in the definition of “overseas securities”) means shares, stock or other securities issued by—

(a) the government of the United Kingdom,

(b) any public or local authority in the United Kingdom, or

(c) any company or other body resident in the United Kingdom,

or overseas securities, and

“tax advantage” has the meaning given by section 840ZA of ICTA.

- (2) For the purposes of this Schedule references to a person’s receiving any asset include the person’s obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.
- (3) For the purposes of this Schedule—
- (a) in any case where a person buys securities (or has a right or obligation to buy securities) but the securities are (or are to be) held for another person’s benefit, that other person is treated as buying (or having the right or obligation to buy) the securities, and
- (b) in any case where a person sells securities but the proceeds of the sale are held for another person’s benefit, that other person is treated as selling the securities.
- (4) For the purposes of this Schedule securities are similar if they entitle their holders to—
- (a) the same rights against the same persons as to capital, interest and dividends, and
- (b) the same remedies for the enforcement of those rights,
- in spite of any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (5) For the purposes of this Schedule it does not matter whether or not provision of any arrangement conferring a right or imposing an obligation on any person to buy any securities is subject to any conditions.

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- (6) For the purposes of this Schedule an arrangement is in force from the time when the securities are initially sold until the earlier of—
- (a) the time when the relevant repurchase takes place, and
 - (b) the time when it becomes apparent that that repurchase will not take place.
- (7) For this purpose “the relevant repurchase” means—
- (a) in the case of a debtor repo, the subsequent buying of the securities or similar securities,
 - (b) in the case of a debtor quasi-repo, the subsequent buying of the securities or other securities by the borrower, the receipt of the asset from the borrower or (as the case may be) the discharge of the liability to the borrower,
 - (c) in the case of a creditor repo, the subsequent sale of the securities or similar securities, and
 - (d) in the case of a creditor quasi-repo, the subsequent sale of the securities or other securities by the lender, the receipt of the asset from the lender or (as the case may be) the discharge of the liability to the lender.
- (8) Any reference in this Schedule to an amount being recognised in determining a company’s profit or loss for a period is to an amount being recognised for accounting purposes—
- (a) in the company’s profit and loss account or income statement,
 - (b) in the company’s statement of recognised gains and losses or statement of changes in equity, or
 - (c) in any other statement of items brought into account in calculating the company’s profits and losses for that period.
- (9) In determining for the purposes of this Schedule whether an amount is recorded as a financial asset or liability in respect of the advance it is to be assumed that the period of account in which the advance is received or made ended immediately after the receipt or making of the advance.
- (10) For the purposes of paragraphs 6(4) and 11(4)—
- (a) any period of account in which the advance is received or made is treated as if it ended immediately after the receipt or making of the advance, and
 - (b) a new period of account is treated as beginning immediately after the end of that period.
- (11) If any person does not draw up accounts in accordance with generally accepted accounting practice, this Schedule applies as if the accounts had been drawn up by the person in accordance with that practice.

Power to modify Schedule

- 15 (1) The Treasury may by regulations provide for all or any of the provisions of this Schedule to apply with modifications in relation to either or both of the following cases—
- (a) non-standard repo cases (see sub-paragraphs (2) to (5)), and
 - (b) cases involving redemption arrangements (see sub-paragraph (6)).
- (2) A case is a non-standard repo case if—
- (a) a company has a repo,

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- (b) there has been a sale of the securities under the arrangement or arrangements by reference to which the company has the repo, and
 - (c) any of conditions A to C are met in relation to the repo.
- (3) Condition A is that those securities, or similar or other securities, are not subsequently bought under the arrangement or arrangements.
- (4) Condition B is that provision is made by or under an arrangement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the subsequent purchase, are to represent those initially sold.
- (5) Condition C is that provision is made by or under an arrangement for securities to be treated as not so included.
- (6) A case involves redemption arrangements if—
 - (a) arrangements, corresponding to those made in cases where a company has a repo, are made in relation to securities that are to be redeemed in the period after their sale, and
 - (b) the arrangements are such that a person (instead of having the right or obligation to buy those securities, or similar or other securities, at any subsequent time) has a right or obligation in respect of the benefits that will result from the redemption.
- (7) The regulations may—
 - (a) make different provision for different cases, and
 - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (8) Regulations about paragraph 6 or 11 may, in particular, include modifications of TCGA 1992 in relation to cases where, as a result of the regulations, any acquisition or disposal is excluded from those which are to be ignored for the purposes of corporation tax in respect of chargeable gains.
- (9) In this paragraph—
 - “modifications” include exceptions and omissions, and
 - “repo” means—
 - (a) a debtor repo or debtor quasi-repo, or
 - (b) a creditor repo or creditor quasi-repo (including anything treated, as a result of paragraph 12, as a creditor repo for the purposes of paragraph 10).