

## SCHEDULES

### SCHEDULE 15

Section 44

#### CONNECTED COMPANIES: RELEASES OF DEBTS

##### *Amendments of section 322 of CTA 2009*

- 1 (1) Section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account) is amended as follows.
  - (2) In subsection (4), after “release is” insert “not a release of relevant rights and is”.
  - (3) After that subsection insert—
    - “(4A) Relevant rights” has the same meaning for the purposes of this section as it has for the purposes of section 358.”

##### *Amendments of Chapter 6 of Part 5 of CTA 2009*

- 2 (1) Chapter 6 of Part 5 of CTA 2009 (connected companies relationships: release of debts etc) is amended as follows.
  - (2) In section 353(2)(b) (introduction to Chapter), for “except where the release is a deemed release under section 361 or 362” substitute “subject to some exceptions”.
  - (3) In section 358 (exclusion of credits on release of connected companies debts: general)—
    - (a) in subsection (1)(a), for “a company’s debtor relationship is released,” substitute “a debtor relationship of a company (“D”) is released, and”,
    - (b) in subsection (2), for “The company” substitute “D” and for “it is a deemed release” substitute
      - “—
      - (a) it is a deemed release, or
      - (b) it is a release of relevant rights.”, and
    - (c) at the end insert—
      - “(4) For the purposes of this section “relevant rights” means rights of a company (“C”) that—
        - (a) were acquired by C in circumstances that, but for the application of the corporate rescue exception or the debt-for-debt exception, would have resulted in a deemed release under section 361(3), or
        - (b) were acquired by another company in such circumstances and transferred to C by way of an assignment or assignments.

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- (5) The amount of the credit that D is required to bring into account in respect of a release of relevant rights is—
- (a) the amount of the discount received on the acquisition, less
  - (b) the sum of any credits brought into account in respect of that amount (whether in the accounting period in which the release takes place or in a previous accounting period) by C or, in a case within subsection (4)(b), by the company that acquired the rights or any company to which the rights were subsequently assigned.
- (6) A reference in subsection (5) to the amount of the discount received on the acquisition is to the amount that would have been treated as released under section 361(4) on the acquisition, but for the application of the corporate rescue exception or the debt-for-debt exception.”
- (4) In section 361 (acquisition of creditor rights by connected company at undervalue)—
- (a) in subsection (1), for paragraph (f) substitute—
    - “(f) no relevant exception applies.”, and
  - (b) for subsection (2) substitute—
    - “(2) In subsection (1) “relevant exception” means—
    - (a) the corporate rescue exception (see section 361A),
    - (b) the debt-for-debt exception (see section 361B), or
    - (c) the equity-for-debt exception (see section 361C).”
- (5) After section 361 insert—

**“361A The corporate rescue exception**

- (1) For the purposes of section 361, the “corporate rescue exception” applies if—
  - (a) the acquisition is an arm’s length transaction,
  - (b) there has been a change in the ownership of D at any time in the period beginning one year before, and ending 60 days after, the date of the acquisition,
  - (c) it is reasonable to assume that, but for the change in ownership, D would, within one year of the date of the change of ownership, have met one of the insolvency conditions, and
  - (d) it is reasonable to assume that, but for the change in ownership, the acquisition would not have been made.
- (2) Subject to subsection (3), section 769 of ICTA (rules for ascertaining change in ownership of company) applies for the purpose of construing a reference in this section to a change in the ownership of a company.
- (3) A reference in this section to a change in the ownership of a company, in the case of a company that is a building society, is a reference to—
  - (a) an amalgamation of two or more building societies under section 93 of the Building Societies Act 1986,
  - (b) a transfer of all the engagements of one building society to another under section 94 of that Act, or

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- (c) a transfer of the whole of the business of a building society to a company under section 97 of that Act.
- (4) Sections 322(6) and 323 (insolvency conditions) apply for the purposes of this section.

### **361B The debt-for-debt exception**

- (1) For the purposes of section 361, the “debt-for-debt exception” applies if condition 1 or 2 is met.
- (2) Condition 1 is that—
  - (a) the acquisition is an arm’s length transaction,
  - (b) the rights that are acquired are rights under a loan relationship that is represented by a security (“the old security”),
  - (c) the consideration given by C for the acquisition consists only of a security (“the new security”) representing a loan relationship to which C is a party as debtor, and
  - (d) the new security—
    - (i) has the same nominal value as the old security, and
    - (ii) at the time of the acquisition, has substantially the same market value as the old security.
- (3) Condition 2 is that—
  - (a) the acquisition is an arm’s length transaction,
  - (b) the rights that are acquired are rights under a loan relationship that is represented by an asset other than a security (“the old unsecured loan”),
  - (c) the consideration given by C for the acquisition consists only of an asset other than a security (“the new unsecured loan”) representing a loan relationship to which C is a party as debtor, and
  - (d) the amount of the new unsecured loan, and its terms, are substantially the same as those of the old unsecured loan.
- (4) In this section “market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of that Act).
- (5) In determining for the purposes of this section the market value of a security in a case in which the security represents a loan relationship to which section 415 (loan relationships with embedded derivatives) applies, rights or liabilities within subsection (1)(b) of that section are to be treated as comprised in the loan relationship.

### **361C The equity-for-debt exception**

- (1) For the purposes of section 361 the “equity-for-debt exception” applies if the following two conditions are met.
- (2) The first condition is that the acquisition is an arm’s length transaction.
- (3) The second condition is that the consideration given by C for the acquisition consists only of—
  - (a) shares forming part of the ordinary share capital of C,

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- (b) shares forming part of the ordinary share capital of a company connected with C, or
  - (c) an entitlement to shares within paragraph (a) or (b).”
- (6) In section 363—
- (a) in the heading, for “and” substitute “to”, and
  - (b) in subsections (1) and (4), for “and” substitute “to”.

### *Commencement*

- 3
- (1) The amendments made by paragraph 1 have effect in relation to a release of rights that takes place on or after 9 November 2009.
  - (2) The amendments made by paragraph 2(2) and (4) to (6) have effect in relation to a relevant acquisition that is made on or after 14 October 2009.
  - (3) The amendments made by paragraph 2(3) have effect in relation to a release of rights that takes place on or after 14 October 2009.
  - (4) Sub-paragraphs (1) to (3) are subject to paragraph 4.
  - (5) In this paragraph and paragraph 4 “relevant acquisition” means an acquisition of rights within subsection (1)(a) to (e) of section 361 of CTA 2009 (acquisition of creditor rights by connected company at an undervalue).

### *Transitional provision*

- 4
- (1) The amendments made by this Schedule do not have effect in relation to a relevant acquisition that is made on or after 14 October 2009, or to a release of rights acquired by way of such an acquisition, if—
    - (a) the acquisition is made pursuant to an agreement entered into before 14 October 2009, or
    - (b) the acquisition is made during the transitional period and condition A, B or C is met.
  - (2) Condition A is that, before 14 October 2009—
    - (a) the original creditor received a proposal from the new creditor that the acquisition should be made, or
    - (b) the new creditor received a proposal from the original creditor that the acquisition should be made.
  - (3) Condition B is that—
    - (a) the acquisition is of rights under a loan relationship that is represented by a security,
    - (b) during the transitional period the new creditor acquires rights under other loan relationships represented by securities, and
    - (c) before 14 October 2009, either—
      - (i) persons together holding more than 50% by value of the securities referred to in paragraphs (a) and (b) (“the bought-back securities”) received proposals from the new creditor that the acquisitions should be made, or

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(ii) the new creditor received proposals from persons together holding more than 50% by value of the bought-back securities that the acquisitions should be made.

(4) In sub-paragraphs (2) and (3)—

- (a) a reference to the original creditor includes any person acting on behalf of, or who controls, the original creditor,
- (b) a reference to the new creditor includes any person acting on behalf of, or who controls, the new creditor, and
- (c) a reference to a person holding a security includes any person acting on behalf of, or who controls, the person holding the security.

(5) Condition C is that—

- (a) before 14 October 2009, the Financial Services Authority gave its agreement (“the FSA agreement”) to the acquisition being made (and had not withdrawn that agreement),
- (b) if the FSA agreement was given subject to the agreement of any other person, the agreement of that other person was also given (and not withdrawn) before that date, and
- (c) condition A or B would have been met but for the compliance by the original creditor or the new creditor with any other term on which the FSA agreement was given.

(6) In this paragraph—

- (a) “the original creditor”, in relation to a relevant acquisition, means the person from whom the rights are acquired, and
- (b) “the new creditor”, in relation to a relevant acquisition, means the person who acquires the rights.

(7) In this paragraph “the transitional period” means the period—

- (a) beginning with 14 October 2009, and
- (b) ending with 31 January 2010.

(8) Section 472 of CTA 2009 (meaning of “control”) applies for the purposes of this paragraph.