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SCHEDULES

SCHEDULE 30

Section 209

SECTION 208 [F1OR 208A] PENALTY: VALUE OF THE DENIED ADVANTAGE

Textual Amendments

- F1** Words in Sch. 30 heading inserted (with effect in accordance with Sch. 28 para. 15 of the amending Act) by Finance Act 2021 (c. 26), Sch. 28 para. 10

Introduction

- 1 This Schedule applies for the purposes of calculating penalties under section 209.

Value of denied advantage: normal rule

- 2 (1) The value of the denied advantage is the additional amount due or payable in respect of tax as a result of counteracting the denied advantage.
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
- (a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and
 - (b) an amount which would be repayable by HMRC if the denied advantage were not counteracted.
- (3) The following are ignored in calculating the value of the denied advantage—
- (a) group relief, and
 - (b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.
- (4) This paragraph is subject to paragraphs 3 and 4.

Value of denied advantage: losses

- 3 (1) To the extent that the denied advantage has the result that a loss is wrongly recorded for purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the denied advantage is determined in accordance with paragraph 2.
- (2) To the extent that the denied advantage has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the denied advantage is—
- (a) the value under paragraph 2 of so much of the denied advantage as results from the part (if any) of the loss which is used to reduce the amount due or payable in respect of tax, plus

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- (b) 10% of the part of the loss not so used.
- (3) Sub-paragraphs (1) and (2) apply both—
 - (a) to a case where no loss would have been recorded but for the denied advantage, and
 - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) To the extent that a denied advantage creates or increases an aggregate loss recorded for a group of companies—
 - (a) the value of the denied advantage is calculated in accordance with this paragraph, and
 - (b) in applying paragraph 2 in accordance with sub-paragraphs (1) and (2), group relief may be taken into account (despite paragraph 2(3)).
- (5) To the extent that the denied advantage results in a loss, the value of it is nil where, because of the nature of the loss or P's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Value of denied advantage: deferred tax

- 4 (1) To the extent that the denied advantage is a deferral of tax, the value of that advantage is—
 - (a) 25% of the amount of the deferred tax for each year of the deferral, or
 - (b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year,or, if less, 100% of the amount of the deferred tax.
- (2) This paragraph does not apply to a case to the extent that paragraph 3 applies.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 212(4)(f) and word inserted by [2021 c. 26 Sch. 27 para. 43\(b\)\(ii\)](#)
- s. 212(5)(a)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(ii\)](#)
- s. 212(5)(b)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(iv\)](#)
- s. 212(5)(c)(iv) and word inserted by [2021 c. 26 Sch. 27 para. 43\(c\)\(v\)](#)
- Sch. 31 para. 2(3)(b) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(iii\)](#)
- Sch. 31 para. 2(4A) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(c\)](#)
- Sch. 31 para. 3(1A) inserted by [2017 c. 32 Sch. 14 para. 45\(3\)\(b\)](#)
- Sch. 31 para. 5(b) inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(c\)](#)
- Sch. 31 para. 2(3)(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(ii\)](#)
- Sch. 31 para. 5(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(b\)](#)
- Sch. 31 para. 2(3)(a) words renumbered as Sch. 31 para. 2(3)(a) by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(i\)](#)
- Sch. 31 para. 5(a) words renumbered as Sch. 31 para. 5(a) by [2017 c. 32 Sch. 14 para. 45\(4\)\(a\)](#)
- Sch. 32 para. 1(2)(b) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(iii\)](#)
- Sch. 32 para. 1(3A) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(c\)](#)
- Sch. 32 para. 1(2)(a) words inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(ii\)](#)
- Sch. 32 para. 1(2)(a) words renumbered as Sch. 32 para. 1(2)(a) by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(i\)](#)