

SCHEDULES

SCHEDULE 4

AVOIDANCE INVOLVING PROFIT FRAGMENTATION ARRANGEMENTS

The enjoyment conditions

- 4 (1) The enjoyment conditions are met in relation to a related individual if—
- (a) it is reasonable to conclude that some or all of the value transferred as a result of the material provision relates to something done by, or any property or purported right of, the individual, and
 - (b) either of the conditions in sub-paragraph (2) is met.
- (2) The conditions are that—
- (a) under the arrangements—
 - (i) the value transferred, or part of it, is so dealt with by any person as to be calculated at some time to enure for the benefit of the individual,
 - (ii) the value transferred, or part of it, operates to increase the value of any assets which the individual holds or are held for the benefit of the individual,
 - (iii) the individual receives or is entitled to receive any benefit provided or to be provided out of the value transferred or part of it,
 - (iv) the individual may become entitled to the beneficial enjoyment of the value transferred, or part of it, if one or more powers are exercised or successively exercised (and for those purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person), or
 - (v) the individual (whether acting alone or together with any other person) is able in any manner to control directly or indirectly the application of the value transferred or part of it, or
 - (b) it is reasonable to conclude that the individual (whether acting alone or with any other person) procured the transfer of value from the resident party to the overseas party in such a way as to avoid the conditions in paragraph (a) being met.
- (3) In determining whether the conditions in sub-paragraph (2)(a) are met in relation to an individual and the value transferred as a result of the material provision, all benefits which may at any time accrue to a person as a result of the value being transferred must be taken into account, irrespective of—
- (a) the nature or form of the benefits, or
 - (b) whether the person has legal or equitable rights in respect of the benefits.
- (4) For the purposes of sub-paragraphs (2) and (3), references to an individual include a reference to any person connected with that individual and, for the purposes of this paragraph, section 993 of ITA 2007 (meaning of “connected”) has effect but as if—
- (a) subsection (4) of that section were omitted, and

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

- (b) members of a partnership in which the individual is also a member were not “associates” of the individual for the purposes of sections 450 and 451 of CTA 2010 (“control”).
- (5) For the purposes of sub-paragraph (4), an individual is treated as connected with a person or entity if—
- (a) the individual or a person connected with the individual (whether acting alone or with any other person)—
 - (i) is able to secure that the person or entity acts in accordance with the wishes of the individual or any person connected with the individual,
 - (ii) is able to acquire rights which would enable the individual or any person connected with the individual to secure that the person or entity acts in accordance with the wishes of the individual or any person connected with the individual, or
 - (iii) is able to exercise significant influence over the person or entity (whether or not as a result of a legal entitlement of the individual or any person connected with the individual), or
 - (b) the person or entity can reasonably be expected to act, or typically acts, in accordance with the wishes of the individual or a person connected with the individual.