

## SCHEDULES

### SCHEDULE 5

Section 87

#### SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

After Schedule 28AA to ICTA insert—

#### “SCHEDULE 28AB

#### SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

##### **Introductory**

- 1 (1) A scheme or arrangement, other than a scheme or arrangement falling within sub-paragraph (3), is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 apply to it.
- (2) A scheme or arrangement falling within sub-paragraph (3) is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 would, on the assumption in sub-paragraph (4), apply to it.
- (3) A scheme or arrangement falls within this sub-paragraph if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by a body corporate resident in a territory outside the United Kingdom to be taken into account in the case of a person.
- (4) The assumption is that the body corporate is resident in the United Kingdom.
- (5) Nothing in sub-paragraph (4) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

##### **Attribution of foreign tax**

- 2 This paragraph applies to a scheme or arrangement if the scheme or arrangement enables a person who is party to, or concerned in, the scheme or arrangement to pay, in respect of a source of income or chargeable gain, an amount of foreign tax all or part of which is properly attributable to another source of income or chargeable gain (or to more than one such other source).

##### **Effect of paying foreign tax**

- 3 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax (“the claimant”).
- (2) This sub-paragraph is satisfied if—
  - (a) an amount of foreign tax is paid by the claimant, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) at the time when the claimant entered into the scheme or arrangement, it could reasonably be expected that the effect of the payment of that amount of foreign tax on the foreign tax total would be to increase it by less than the amount allowable to the claimant as a credit in respect of the payment of that amount of foreign tax.
- (3) The foreign tax total is the amount found by—
- (a) aggregating the amounts of foreign tax paid or payable in respect of the transaction or transactions forming part of the scheme or arrangement by persons party to, or concerned in, the scheme or arrangement, and
  - (b) taking into account any reliefs, deductions, reductions or allowances against or in respect of any tax that arise to the persons party to, or concerned in, the scheme or arrangement (including any reliefs, deductions, reductions or allowances arising to any one or more of those persons as a consequence of the payment by the claimant of that amount of foreign tax).

#### **Effect of claim, election or other arrangement**

- 4 (1) This paragraph applies to a scheme or arrangement if under the scheme or arrangement—
- (a) a step is taken by a person who is party to, or concerned in, the scheme or arrangement, or
  - (b) a step that could have been taken by such a person is not taken, and that action or that failure to act has the effect of increasing a claim made by a person who is party to, or concerned in, the scheme or arrangement for an allowance by way of credit in accordance with this Part or of giving rise to such a claim.
- (2) The steps mentioned in sub-paragraph (1) are steps that may be made—
- (a) under the law of any territory, or
  - (b) under arrangements made in relation to any territory.
- (3) The steps mentioned in sub-paragraph (1) include—
- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances;
  - (b) making elections for tax purposes.

#### **Effect attributable to scheme or arrangement**

- 5 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax.
- (2) This sub-paragraph is satisfied if amount A is less than amount B.
- (3) Amount A is the amount of United Kingdom taxes payable by the person in respect of income and chargeable gains arising in the chargeable period.
- (4) Amount B is the amount of United Kingdom taxes that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

### **Tax deductible payments**

- 6 (1) This paragraph applies to a scheme or arrangement if the scheme or arrangement includes—
- (a) the making by a person (“A”) of a relevant payment or payments, and
  - (b) the giving, in respect of that payment or payments, of consideration that satisfies the requirements of sub-paragraph (3).
- (2) A payment made by A is a relevant payment if all or part of it may be brought into account in computing A’s income for the purposes of United Kingdom taxes.
- (3) Consideration given in respect of a payment or payments made by A satisfies the requirements of this sub-paragraph if—
- (a) all or part of it consists of a payment or payments made to A or a person connected with A, and
  - (b) tax is chargeable in respect of the payment or payments under the law of a territory outside the United Kingdom.
- (4) In this paragraph references to a payment include references to a transfer of money’s worth.
- (5) Section 839 applies for the purposes of this paragraph.”