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## SCHEDULES

### SCHEDULE 18A

Section 403F

#### GROUP RELIEF: OVERSEAS LOSSES OF NON-RESIDENT COMPANIES

#### PART 1

#### MEANING OF CONDITIONS FOR THE PURPOSES OF SECTION 403F

##### *Introduction*

- 1 This Part of this Schedule applies, in the case of any non-resident company, for the purposes of section 403F (relief in respect of overseas losses of non-resident companies).

##### *The equivalence condition*

- 2 An amount meets the equivalence condition if it corresponds (in all material respects) to an amount of a kind that, for the purposes of section 403, could be available for surrender by way of group relief by a company resident in the United Kingdom.

##### *The EEA tax loss condition: companies resident in EEA territory*

- 3 (1) In the case of a non-resident company which is resident in an EEA territory (“the relevant territory”), an amount meets the EEA tax loss condition in relation to the relevant territory in so far as conditions A and B are met.
- (2) Condition A is that the amount is calculated in accordance with the applicable rules under the law of the relevant territory for determining, in the case of the company, the amount of any loss or other amount eligible for relief from any tax under the relevant territory.
- (3) Condition B is that, for the purposes of corporation tax, the amount is not attributable to a UK permanent establishment of the company.
- (4) “UK permanent establishment”, in relation to the company, means any permanent establishment through which it carries on a trade in the United Kingdom.
- (5) For the meaning of tax under any territory outside the United Kingdom, see paragraph 17.

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*The EEA tax loss condition: companies not resident in EEA territory*

- 4 (1) In the case of a non-resident company which is not resident in any EEA territory but which carries on a trade in an EEA territory (“the relevant territory”) through a permanent establishment, an amount meets the EEA tax loss condition for any period in relation to the relevant territory in so far as conditions A and B are met.
- (2) Condition A is that the amount is calculated in accordance with the applicable rules under the law of the relevant territory for determining, in the case of the company, the amount of any loss or other amount eligible for relief from any tax under the relevant territory.
- (3) Condition B is that the amount is not attributable to activities of the company which are made exempt from tax under the relevant territory for the period by any double taxation arrangements.
- (4) For this purpose, activities of the company are made exempt from tax under the relevant territory for the period by any double taxation arrangements if those arrangements—
- (a) have the following effect, or
  - (b) would have the following effect if a claim were made.
- (5) The effect is that the income and gains (if any) arising for the period from those activities are ignored in calculating the company's profits, income or gains chargeable to tax under the relevant territory for the period.
- (6) For the purposes of this paragraph, arrangements are double taxation arrangements if they are made with a view to affording relief from double taxation in relation to—
- (a) any tax under the relevant territory and any other territory outside the United Kingdom, or
  - (b) any tax under the relevant territory and United Kingdom income or corporation tax.

*The qualifying loss condition*

- 5 (1) This paragraph applies in the case of a non-resident company—
- (a) which is resident in any EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,
- and for the purposes of this paragraph “the EEA territory concerned” means the EEA territory in which the company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.
- (2) An amount meets the qualifying loss condition in so far as the amount—
- (a) cannot be given qualifying relief for any period (“the current period”) or any other period, and
  - (b) has not been given any other qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned).
- (3) Paragraph 6 determines whether the amount cannot be given qualifying relief for the current period or any previous period.

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- (4) Paragraph 7 determines whether the amount cannot be given qualifying relief for any period after the current period.
- (5) Paragraph 8 determines whether the amount has not been given qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned).

*Qualifying relief for current period and previous periods*

- 6 (1) For the purposes of paragraph 5, an amount cannot be given qualifying relief for the current period or any previous period if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be taken into account in calculating any profits, income or gains which—
  - (a) arise to the company or any other person in the current period or any previous period, and
  - (b) are chargeable to that tax for the current period or any previous period.
- (3) Condition B is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be relieved in the current period or any previous period—
  - (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.
- (4) An amount is to be regarded for the purposes of this paragraph as meeting conditions A and B if (but only if) every step to secure that the amount is so taken into account or relieved is taken (whether by the company or any other person).
- (5) In this paragraph “relevant territory” means—
  - (a) if the company is resident in any EEA territory and is also resident in any other territory outside the United Kingdom, that other territory,
  - (b) if the company is not resident in any EEA territory but carries on a trade in an EEA territory through a permanent establishment, the territory (or territories) in which it is resident.

*Qualifying relief for future periods*

- 7 (1) For the purposes of paragraph 5, an amount cannot be given qualifying relief for any period after the current period if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be taken into account in calculating any profits, income or gains which—
  - (a) might arise to the company or any other person in any period after the current period, and
  - (b) (if there were any) would be chargeable to that tax for any period after the current period.

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- (3) Condition B is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be relieved in any period after the current period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.
- (4) In determining for the purposes of conditions A and B whether an amount can be so taken into account or relieved, the time at which the determination is to be made is the time immediately after the end of the current period.
- (5) In this paragraph “relevant territory” means—
- (a) if the company is resident in any EEA territory and is also resident in any other territory outside the United Kingdom, that other territory,
  - (b) if the company is not resident in any EEA territory but carries on a trade in an EEA territory through a permanent establishment, the territory (or territories) in which it is resident.

*Amount not given other qualifying relief under law of territory outside UK*

- 8 (1) For the purposes of paragraph 5, an amount has not been given qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned) if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under any territory outside the United Kingdom (other than the EEA territory concerned), the amount has not been taken into account in calculating any profits, income or gains which—
- (a) have arisen to the company or any other person in any period, and
  - (b) were chargeable to that tax for the period (or, but for so taking the amount into account, would have been so chargeable).
- (3) Condition B is that, for the purposes of any tax under any territory outside the United Kingdom (other than the EEA territory concerned), the amount has not been relieved in any period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.

*Precedence condition*

- 9 (1) This paragraph applies in the case of a non-resident company (“the relevant company”)—
- (a) which is resident in any EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment.
- (2) An amount meets the precedence condition in relation to the EEA territory concerned in so far as relief for the amount cannot be given in any other territory outside the United Kingdom which is a qualifying territory in relation to the relevant company.

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- (3) For this purpose a territory is a qualifying territory in relation to the relevant company if—
- (a) another company is resident in that territory (which need not be an EEA territory),
  - (b) that other company owns directly or indirectly any ordinary share capital in the relevant company,
  - (c) a third company which is resident in the United Kingdom owns directly or indirectly any ordinary share capital of that other company,
  - (d) the relevant company is a 75 per cent. subsidiary of that third company, and
  - (e) the relevant company is not a 75 per cent. subsidiary of that third company as a result of its being a 75 per cent. subsidiary of a fourth company which is resident in the United Kingdom.
- (4) In this paragraph references, in relation to any amount and any territory, to relief being given for the amount in the territory are to relief being given—
- (a) by taking the amount into account in calculating any profits, income or gains of any person chargeable to tax under the law of that territory,
  - (b) by the payment of a credit to any person under the law of that territory,
  - (c) by the elimination or reduction of a tax liability of any person under the law of that territory, or
  - (d) by any other means of any kind.
- (5) “The EEA territory concerned” means the EEA territory in which the relevant company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.

## PART 2

### APPLICATION OF UK RULES TO NON-RESIDENT COMPANY

#### **Modifications etc. (not altering text)**

- C1** Sch. 18A Pt. 2 modified (28.10.2008 with effect in accordance with reg. 1(2) of the modifying S.I.) by [The Group Relief for Overseas Losses \(Modification of the Corporation Tax Acts for Non-resident Insurance Companies\) Regulations 2008 \(S.I. 2008/2646\)](#), **regs. 1(1), 2**

#### *Introduction*

- 10 (1) This Part of this Schedule applies in the case of any loss or other amount (“the EEA amount”) arising to a non-resident company (“the EEA company”) in any period (“the loss period”) in so far as the EEA amount meets the conditions mentioned in subsection (2)(a) to (d) of section 403F.
- (2) In this Part of this Schedule “the EEA territory concerned” means the EEA territory in which the EEA company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.

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- (3) In this Part of this Schedule any reference to the appropriate part of the EEA amount is to that amount in so far as it meets the conditions mentioned in subsection (2)(a) to (d) of section 403F.

*Basic rules*

- 11 (1) The EEA amount must, on the relevant assumptions (see sub-paragraph (5)), be recalculated in accordance with the applicable UK tax rules (see paragraph 16).
- (2) The amount of the EEA amount that is available for surrender by the EEA company by way of group relief is so much of the appropriate part of it as does not exceed the relevant proportion (see sub-paragraph (5)) of the amount given by that recalculation.
- (3) But if the amount given by that recalculation is an amount of income or other profits, no part of the EEA amount is available for surrender by way of group relief.
- (4) So far as any part of the EEA amount is available for surrender by the EEA company by way of group relief, the provisions of this Chapter have effect in that case on the basis that the relevant assumptions are made.
- (5) In this paragraph—  
     “the relevant assumptions” are the assumptions set out in paragraphs 12 to 15,  
     and  
     “the relevant proportion” means the proportion that the appropriate part of the EEA amount bears to the EEA amount.

*Assumptions as to UK residence*

- 12 (1) It is to be assumed that the EEA company is resident in the United Kingdom throughout the loss period.
- (2) But this does not require it to be assumed—  
     (a) that there is any change in the place or places at which the EEA company carries on its activities (although see paragraph 13), or  
     (b) that the EEA company ceases to be resident in the United Kingdom at the end of the loss period.
- (3) It is to be assumed that the EEA company becomes resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the beginning of the loss period.

*Assumptions as to places in which activities carried out*

- 13 (1) In the case of any trade carried on by the EEA company in the loss period wholly or partly in the EEA territory concerned, it is to be assumed that the trade is carried on wholly or partly in the United Kingdom.

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- (2) In the case of any estate, interest or rights in or over land in the EEA territory concerned which are held by the EEA company, it is to be assumed that the land is in the United Kingdom.
- (3) For this purpose, the reference to domestic concepts of law in relation to the land in the EEA territory concerned is to be read so as to produce the result that most closely corresponds with that produced for [F1the purpose of calculating the profits of a UK property business under Part 4 of CTA 2009] in relation to land in the United Kingdom.

#### Textual Amendments

- F1** Words in [Sch. 18A para. 13\(3\)](#) substituted (1.4.2009 with effect in accordance with [s. 1329\(1\)](#) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [Sch. 1 para. 281](#) (with [Sch. 2 Pts. 1, 2](#))

#### *Deemed accounting period*

- 14 (1) It is to be assumed that an accounting period of the EEA company begins at the beginning of the loss period.
- (2) It is to be assumed that the accounting period ends on the earlier of—
- (a) the end of 12 months from the beginning of the loss period, or
  - (b) the end of the loss period.
- (3) If an accounting period ends in accordance with sub-paragraph (2)(a), it is to be assumed that a further accounting period begins when the previous one ends.
- (4) It is to be assumed that the further accounting period ends on the earlier of—
- (a) the end of 12 months from the beginning of the further accounting period, or
  - (b) the end of the loss period.

#### *Capital allowances*

- 15 (1) This paragraph applies if, before the beginning of the loss period, the EEA company incurs any capital expenditure on the provision of plant or machinery for the purposes of any activity.
- (2) It is to be assumed for the purposes of Part 2 of the Capital Allowances Act that the plant or machinery—
- (a) was provided for purposes wholly other than those of the activity, and
  - (b) was not brought into use for the purposes of the activity until the beginning of the loss period,
- and section 13 of the Capital Allowances Act (use for qualifying activity of plant or machinery provided for other purposes) is to apply accordingly.
- (3) This paragraph is to be read as one with Part 2 of the Capital Allowances Act.

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### *Applicable UK tax rules*

- 16 (1) For the purposes of this Part of this Schedule references to recalculating the EEA amount in accordance with the applicable UK tax rules are to recalculating it in accordance with any provision made by or under the Corporation Tax Acts—
- (a) which applies for the purpose of calculating for corporation tax purposes the amount of the loss or other amount to which the EEA amount corresponds, or
  - (b) which otherwise affects in any way the amount of that loss or other amount for which relief from corporation tax is available.
- (2) For the purposes of sub-paragraph (1), the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts—
- (a) which applies as mentioned in sub-paragraph (1)(a), or
  - (b) which otherwise affects an amount as mentioned in sub-paragraph (1)(b).
- (3) Regulations under this paragraph may make provision in relation to—
- (a) all classes of trade or business, or
  - (b) any particular class or classes of trade or business.
- (4) Regulations under this paragraph may make—
- (a) different provision for different cases or different purposes, and
  - (b) incidental, supplemental, consequential or transitional provision and savings.
- (5) Regulations under this paragraph may make provision having effect before the date on which the regulations are made.

## PART 3

### DEFINITIONS FOR THE PURPOSES OF THIS SCHEDULE

#### *Charge to tax under the law of any territory outside the United Kingdom*

- 17 (1) This paragraph applies for the purposes of this Schedule.
- (2) Any reference to a tax under a territory outside the United Kingdom is a reference to a tax chargeable under the law of that territory which—
- (a) is charged on income and corresponds to United Kingdom income tax, or
  - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax.
- (3) A tax chargeable under the law of a territory outside the United Kingdom is not to be regarded as failing to correspond to income or corporation tax just because—
- (a) it is chargeable under the law of a province, state or other part of a country, or
  - (b) it is levied by or on behalf of a municipality or other local body.



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