SCHEDULES

SCHEDULE 3

QUALIFYING SCHEME

PART 3

SCHEMES INVOLVING HYBRID EFFECT

Schemes involving hybrid effect

4 A scheme falls within this Part if it satisfies the requirements of paragraph 5, 6, 7 or 8.

Instruments of alterable character

5 (1) A scheme satisfies the requirements of this paragraph if one of the parties to the scheme is party to an instrument falling within sub-paragraph (2).

(2) An instrument falls within this sub-paragraph if, under the law of a particular territory, a relevant characteristic of the instrument may be altered on the election of any party to the instrument.

(3) For the purposes of this paragraph a characteristic of an instrument is a relevant characteristic if, under the law of a particular territory, altering it has the effect of determining whether, for the tax purposes of that territory—

(a) the instrument is taken into account as giving rise to income,

(b) the instrument is taken into account as giving rise to capital, or

(c) the instrument does not fall to be taken into account as giving rise either to income or to capital.

(4) An instrument is taken into account as giving rise to capital if any gain on the disposal of the instrument would, or would if the person making the disposal were resident in the United Kingdom, be a chargeable gain.

Shares subject to conversion

6 (1) A scheme satisfies the requirements of this paragraph if it includes—

(a) the issuing by a company of shares subject to conversion, or

(b) the amendment of rights attaching to shares issued by a company such that the shares become shares subject to conversion.

(2) For the purposes of sub-paragraph (1) a company's shares are shares subject to conversion if—

(a) the rights attached to the shares include provision by virtue of which a holder of such shares is entitled, on the occurrence of an event, to acquire by conversion or exchange securities in the company or another company, and

(b) the occurrence of the event is within the reasonable expectation of the company at the relevant time.

(3) For the purposes of sub-paragraph (2) the relevant time is—

(a) the time when the shares are issued, or

(b) if at the time when the shares are issued the occurrence of the event is not within the company's reasonable expectation and the rights attaching to the shares are later amended as described in sub-paragraph (1)(b), the time when the rights attaching to the shares are so amended.

(4) In this paragraph "security" has the same meaning as in Part 6 of ICTA.

Securities subject to conversion

7 (1) A scheme satisfies the requirements of this paragraph if it includes—

(a) the issuing by a company of securities subject to conversion, or

(b) the amendment of rights attaching to securities issued by a company such that the securities become securities subject to conversion.

(2) For the purposes of sub-paragraph (1) a company's securities are securities subject to conversion if—

(a) the rights attached to the securities include provision by virtue of which a holder of such securities is entitled, on the occurrence of an event, to acquire by conversion or exchange shares in the company or another company, and

(b) the occurrence of the event is within the reasonable expectation of the company at the relevant time.

(3) For the purposes of sub-paragraph (2) the relevant time is—

(a) the time when the securities are issued, or

(b) if at the time when the securities are issued the occurrence of the event is not within the company's reasonable expectation and the rights attaching to the securities are later amended as described in sub-paragraph (1)(b), the time when the rights attaching to the securities are so amended.

(4) In this paragraph "security" has the same meaning as in Part 6 of ICTA.

Debt instruments treated as equity

8 (1) A scheme satisfies the requirements of this paragraph if it includes a debt instrument issued by a company that is treated as equity in the company under generally accepted accounting practice.

(2) For the purposes of this paragraph, a debt instrument is an instrument issued by a company that represents a loan relationship of the company or, if the company were a company resident in the United Kingdom, would represent a loan relationship of the company.