

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Finance Act 2008, Paragraph 18 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 22

#### AVOIDANCE INVOLVING FINANCIAL ARRANGEMENTS

##### *Loan relationships treated differently by debtor and creditor*

18 (1) In FA 1996, after section 94A insert—

##### **“94B Loan relationships treated differently by connected debtor and creditor**

- (1) This section applies where there are two companies which are connected and conditions A, B and C are met.
- (2) Condition A is that one of the companies (“the debtor company”), in accordance with generally accepted accounting practice, treats the rights and liabilities under a loan relationship to which it is a party as debtor as divided between—
  - (a) rights and liabilities under a loan relationship (“the host contract”), and
  - (b) rights and liabilities under one or more derivative financial instruments or equity instruments.
- (3) Condition B is that the other company is party to the loan relationship as creditor (“the creditor company”) and, in accordance with generally accepted accounting practice, does not treat its rights and liabilities under the loan relationship as so divided.
- (4) Condition C is that the debits brought into account by the debtor company under this Chapter in respect of the host contract for any accounting period exceed the credits brought into account (otherwise than by virtue of this section) in respect of the loan relationship by the creditor company for the corresponding accounting period or periods of the creditor company.
- (5) The creditor company is to be treated for the purposes of this Chapter as bringing into account for the corresponding accounting period or periods additional credits in respect of the loan relationship of an amount equal to the excess.
- (6) But where the creditor company is party to the loan relationship as creditor during only part of the corresponding accounting period (or any of the corresponding periods) it is to be treated for those purposes as bringing into account for the period only such portion of the excess as is just and reasonable.
- (7) The references in this section to a company which is party to a loan relationship as debtor or creditor include a company which indirectly stands in the position of a debtor or creditor as respects the loan relationship by

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reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of debtor or creditor.

- (8) For the purposes of this section an accounting period of the creditor company corresponds with an accounting period of the debtor company if it coincides with it or falls wholly or partly within it.
  - (9) Where a corresponding accounting period of the creditor company does not coincide with that of the debtor company such apportionments as are just and reasonable are to be made for the purposes of this section.
  - (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this section; but two companies are also connected for the purposes of this section if their accounting results are reflected in the consolidated group accounts of a group of companies.”
- (2) In paragraph 7 of Schedule 6 to F(No.2)A 2005 (loan relationships with embedded derivatives), after sub-paragraph (1) insert—
- “(1A) An election under this paragraph does not have effect in relation to any relevant assets in the case of which section 94B of FA 1996 applies.”
- (3) The amendment made by sub-paragraph (1) has effect in relation to debits and credits arising on or after 12 March 2008.
  - (4) The amendment made by sub-paragraph (2) has effect in relation to elections made on or after that date.

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