

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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 15

#### TAX TREATMENT OF FINANCING COSTS AND INCOME

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

**C1** Sch. 15 modified (21.7.2009 retrospective) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 para. 36\(2\)](#)

### PART 2

#### APPLICATION OF THIS SCHEDULE

##### *Application of Schedule*

- 2 (1) This Schedule applies to any period of account of the worldwide group for which—
- (a) the UK net debt of the group (see paragraphs 3 and 4), exceeds
  - (b) 75% of the worldwide gross debt of the group (see paragraph 5).
- (2) But a period of account that is within sub-paragraph (1) is not a period of account to which this Schedule applies if the worldwide group is a qualifying financial services group in that period (see paragraph 7).
- (3) The Treasury may by order amend sub-paragraph (1)(b) by substituting a higher or lower percentage for the percentage for the time being specified there.
- (4) No order may be made under sub-paragraph (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (5) An order under sub-paragraph (3) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

##### *UK net debt of the worldwide group for period of account of worldwide group*

- 3 (1) The reference in paragraph 2 to the “UK net debt” of the worldwide group for a period of account of the group is to the sum of the net debt amounts of each company that was a relevant group company at any time during the period.
- (2) In this paragraph “net debt amount”, in relation to a company, means the average of—
- (a) the net debt of the company as at that company's start date, and
  - (b) the net debt of the company as at that company's end date.
- For the meaning of “net debt”, see paragraph 4.
- (3) Where the amount determined in accordance with sub-paragraph (2) is less than £3 million, the net debt amount of the company is nil.

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

- (4) Where a company is dormant (within the meaning given by section 1169 of the Companies Act 2006) at all times in the period beginning with that company's start date and ending with that company's end date, the net debt amount of the company is nil.
- (5) The Treasury may by order amend sub-paragraph (3) by substituting a higher or lower amount for the amount for the time being specified there.
- (6) No order may be made under sub-paragraph (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (7) An order under sub-paragraph (5) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.
- (8) In this Part—
  - (a) “the start date” of a company means the first day of the period of account of the worldwide group or, if later, the first day in the period on which the company was a relevant group company, and
  - (b) “the end date” of a company means the last day of the period of account of the worldwide group or, if earlier, the last day in the period on which the company was a relevant group company.

*Net debt of a company*

- 4 (1) References in paragraph 3 to the “net debt” of a company as at any date are to—
  - (a) the sum of the company's relevant liabilities as at that date, less
  - (b) the sum of the company's relevant assets as at that date.
- (2) The amount determined in accordance with sub-paragraph (1) may be a negative amount.
- (3) For the purposes of this paragraph a company's “relevant liabilities” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
  - (a) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),
  - (b) liabilities in respect of finance leases, or
  - (c) amounts of such other description as may be specified in regulations made by the Commissioners.
- (4) For the purposes of this paragraph a company's “relevant assets” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
  - (a) cash and cash equivalents,
  - (b) amounts loaned (whether by way of overdraft or other short term or long term loan),
  - (c) net investments, or net cash investments, in finance leases,
  - (d) securities of Her Majesty's government or of the government of any other country or territory, or
  - (e) amounts of such other description as may be specified in regulations made by the Commissioners.

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

- (5) Expressions used in sub-paragraphs (3)(a) and (b) and (4)(a) to (c) have the meaning for the time being given by generally accepted accounting practice.

*Worldwide gross debt of worldwide group for period of account of worldwide group*

- 5 (1) The reference in paragraph 2 to the “worldwide gross debt” of the worldwide group for a period of account of the group is to the average of—
- (a) the sum of the relevant liabilities of the group as at the day before the first day of the period, and
  - (b) the sum of the relevant liabilities of the group as at the last day of the period.
- (2) For the purposes of this paragraph the “relevant liabilities” of the worldwide group as at any date are the amounts that are disclosed in the balance sheet of the group as at that date in respect of—
- (a) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),
  - (b) liabilities in respect of finance leases, or
  - (c) amounts of such other description as may be specified in regulations made by the Commissioners.
- (3) Expressions used in sub-paragraph (2)(a) and (b) have the meaning for the time being given by the accounting standards in accordance with which the financial statements of the group are drawn up.
- (4) For provision about references in this Schedule to financial statements of the worldwide group, and amounts disclosed in financial statements, see paragraphs 87 to 90.

*References to amounts disclosed in balance sheet of relevant group company*

- 6 (1) This paragraph applies for the purpose of construing references in paragraph 4 to amounts disclosed in the balance sheet of a relevant group company as at any date (“the relevant date”).
- (2) Where the company—
- (a) is not a foreign company, and
  - (b) does not draw up a balance sheet as at the relevant date,
- the references are to the amounts that would be disclosed in a balance sheet of the company as at that date, were one drawn up in accordance with generally accepted accounting practice.
- (3) Where the company—
- (a) is a foreign company, and
  - (b) draws up a balance sheet (“a UK permanent establishment balance sheet”) as at the relevant date in respect of the company's permanent establishment in the United Kingdom that treats the establishment as a distinct and separate enterprise,
- the references are to amounts in that balance sheet.
- (4) Where the company—
- (a) is a foreign company, and

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

(b) does not draw up a UK permanent establishment balance sheet as at the relevant date,

the references are to the amounts that would be disclosed in a UK permanent establishment balance sheet as at that date, were one drawn up in accordance with generally accepted accounting practice.

(5) For the purposes of this paragraph a relevant group company is a “foreign company” if it is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

*Qualifying financial services groups*

7 (1) The worldwide group is a qualifying financial services group in a period of account if the trading income condition—

- (a) is met in relation to that period, or
- (b) is not met in relation to that period, but only because of losses incurred by the group in respect of activities that are normally reported on a net basis in financial statements prepared in accordance with international accounting standards.

(2) The trading income condition is met in relation to a period of account if—

- (a) all or substantially all of the UK trading income of the worldwide group for that period, or
- (b) all or substantially all of the worldwide trading income of the worldwide group for that period,

is derived from qualifying activities (see paragraph 8).

(3) In this Part, in relation to a period of account of the worldwide group—

“UK trading income” means the sum of the trading income for that period of each company that was a relevant group company at any time during that period (see paragraph 12);

“worldwide trading income” means the trading income for that period of the worldwide group (see paragraph 13).

*Qualifying activities*

8 In this Part “qualifying activities” means—

- (a) lending activities and activities that are ancillary to lending activities (see paragraph 9),
- (b) insurance activities and insurance-related activities (see paragraph 10), and
- (c) relevant dealing in financial instruments (see paragraph 11).

*Lending activities and activities ancillary to lending activities*

9 (1) In this Part “lending activities” means any of the following activities—

- (a) acceptance of deposits or other repayable funds;
- (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting);
- (c) finance leasing (as lessor);
- (d) issuing and administering means of payment;

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

- (e) provision of guarantees or commitments to provide money;
  - (f) money transmission services;
  - (g) provision of alternative finance arrangements;
  - (h) other activities carried out in connection with activities falling within any of paragraphs (a) to (g).
- (2) Activities that are ancillary to lending activities are not qualifying activities for the purposes of this Part if the income derived from the ancillary activities forms a significant part of the total of—
- (a) that income, and
  - (b) the income derived from lending activities of the worldwide group in the period of account.
- (3) In sub-paragraph (2) “income” means the gross income or net income that would be taken into account for the purposes of paragraph 7 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (4) The Commissioners may by order—
- (a) amend sub-paragraph (1), and
  - (b) make other amendments of this paragraph in consequence of any amendment of sub-paragraph (1).
- (5) In sub-paragraph (1)(h), and in the references to ancillary activities in this paragraph and paragraph 8(a), “activities” includes buying, holding, managing and selling assets.
- (6) In this paragraph “alternative finance arrangements” has the same meaning as in Chapter 6 of Part 6 of CTA 2009.

*Insurance activities and insurance related activities*

- 10 (1) In this Part “insurance activities” means—
- (a) the effecting or carrying out of contracts of insurance by a regulated insurer, and
  - (b) investment business that arises directly from activities falling within paragraph (a).
- (2) In this Part “insurance-related activities” means—
- (a) activities that are ancillary to insurance activities, and
  - (b) activities that—
    - (i) are of the same kind as activities carried out for the purposes of insurance activities,
    - (ii) are not actually carried out for those purposes, and
    - (iii) would not be carried out but for insurance activities being carried out.
- (3) Sub-paragraph (2) is subject to sub-paragraph (4).
- (4) Activities that fall within sub-paragraph (2)(a) or (b) (“the relevant activities”) are not insurance-related activities if the income derived from the relevant activities forms a significant part of the total of—
- (a) that income, and

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

- (b) the income derived from insurance activities of the worldwide group in the period of account.
- (5) In sub-paragraph (4) “income” means the gross income or net income that would be taken into account for the purposes of paragraph 7 in calculating the UK or worldwide trading income of the worldwide group for the period of account.
- (6) In this paragraph—
  - “activities” includes buying, holding, managing and selling assets;
  - “contract of insurance” has the same meaning as in Chapter 1 of Part 12 of ICTA;
  - “regulated insurer” means a member of the worldwide group that—
    - (a) is authorised under the law of any territory to carry on insurance business, or
    - (b) is a member of a body or organisation that is so authorised.

*Relevant dealing in financial instruments*

- 11 (1) In this Part “financial instrument” means anything that is a financial instrument for any purpose of the FSA Handbook.
- (2) For the purposes of this Part, a dealing in a financial instrument is a “relevant dealing” if—
  - (a) it is a dealing other than in the capacity of a broker, and
  - (b) profits or losses on the dealing form part of the trading profits or losses of a business.
- (3) In this paragraph “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.

*UK trading income of the worldwide group*

- 12 (1) This paragraph applies in relation to paragraph 7 for calculating the UK trading income of the worldwide group for a period of account.
- (2) The trading income for that period of a relevant group company is the aggregate of—
  - (a) the gross income calculated in accordance with sub-paragraph (3), and
  - (b) the net income calculated in accordance with sub-paragraph (4).
- (3) The income referred to in sub-paragraph (2)(a) is the gross income—
  - (a) arising from the activities of the relevant group company (other than net-basis activities), and
  - (b) accounted for as such under generally accepted accounting practice, without taking account of any deductions (whether for expenses or otherwise).
- (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the relevant group company that—
  - (a) is accounted for as such under generally accepted accounting practice, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under generally accepted accounting practice.
- (5) Sub-paragraphs (3) and (4) are subject to sub-paragraph (6).

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

- (6) In a case where a proportion of an accounting period of a relevant group company does not fall within the period of account of the worldwide group, the gross income or net income for that accounting period of the company is to be reduced, for the purposes of this paragraph, by that proportion.
- (7) Gross income or net income is to be disregarded for the purposes of sub-paragraph (2) if the income arises in respect of an amount payable by another member of the worldwide group that is either a UK group company or a relevant group company.
- (8) In this paragraph “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with generally accepted accounting practice.

#### *Worldwide trading income of the worldwide group*

- 13 (1) This paragraph applies in relation to paragraph 7 for calculating the worldwide trading income of the worldwide group for a period of account.
- (2) The trading income for that period of the worldwide group is the aggregate of—
  - (a) the gross income calculated in accordance with sub-paragraph (3), and
  - (b) the net income calculated in accordance with sub-paragraph (4).
- (3) The income referred to in sub-paragraph (2)(a) is the gross income—
  - (a) arising from the activities of worldwide group (other than net-basis activities), and
  - (b) disclosed as such in the financial statements of the worldwide group, without taking account of any deductions (whether for expenses or otherwise).
- (4) The income referred to in sub-paragraph (2)(b) is the net income arising from the net-basis activities of the worldwide group that—
  - (a) is accounted for as such under international accounting standards, or
  - (b) would be accounted for as such if income arising from such activities were accounted for under international accounting standards.
- (5) In this paragraph “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with international accounting standards.
- (6) For provision about references in this Schedule to financial statements of the worldwide group, and amounts disclosed in financial statements, see paragraphs 87 to 90.

#### *Foreign currency accounting*

- 14 (1) Subject to the following provisions of this paragraph, references in this Part to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide group, as at any date are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent, translated by reference to the spot rate of exchange for that date.
- (2) Sub-paragraph (3) applies in relation to a period of account of the worldwide group if all the amounts disclosed in balance sheets (whether of relevant group companies, or of the worldwide group) that are relevant to a calculation under this Part in relation

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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)*

---

to that period are expressed in the same currency (“the relevant foreign currency”) and that currency is not sterling.

- (3) Where this sub-paragraph applies—
- (a) references in this Schedule to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide group, are to that amount expressed in the relevant foreign currency, and
  - (b) for the purposes of determining under paragraph 3 the net debt amount of a company, the reference in sub-paragraph (3) of that paragraph to £3 million is to be read as a reference to the relevant amount.
- (4) For this purpose “the relevant amount” means the average of—
- (a) £3 million expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's start date, and
  - (b) £3 million expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's end date.

**Status:**

Point in time view as at 21/07/2009.

**Changes to legislation:**

Finance Act 2009, Part 2 is up to date with all changes known to be in force on or before 22 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.