Corporation Tax Act 2010

2010 CHAPTER 4

[F1 PART 7A

BANKING COMPANIES

Textual Amendments

F1 Pt. 7A inserted (with effect in accordance with Sch. 2 para. 7-9 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 2 para. 1**

CHAPTER 1

INTRODUCTION

269A Overview of Part

(1) This Part contains provision about banking companies.

(2) Chapter 2 defines "banking company" and contains other definitions applying for the purposes of this Part.

(3) Chapter 3 contains provision restricting the amount of certain deductions which a banking company may make in calculating its taxable total profits for an accounting period.

F2(4) [Chapter 4 contains provision for a surcharge on banking companies.]

Textual Amendments

F2 S. 269A(4) inserted (18.11.2015) (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 5**

CHAPTER 2

KEY DEFINITIONS

"Banking company"

269B Meaning of "banking company"

(1) In this Part "banking company", in relation to an accounting period, means—

(a) a company which meets conditions A to E,

(b) a company which—

(i) meets conditions A and B, and

(ii) is a member of a partnership which meets conditions C to E, or

(c) a building society.

In subsections (4) to (6) "the relevant entity" means the company or the partnership (as the case may be).

(2) Condition A is that at any time during the accounting period the company—

(a) is a UK resident company, or

(b) is a company which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(3) Condition B is that the company is not an excluded entity at any time during the accounting period (see section 269BA).

(4) Condition C is that, at any time during the accounting period, the relevant entity is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act).

[[F3](5) Condition D is that, at any time in the accounting period—

(a) the relevant entity's activities include the relevant regulated activity described in the provision mentioned in section 269BB(a), or

(b) the relevant entity is an investment bank (see subsection (6A)) whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 269BB(b) to (f).**]**

(6) Condition E is that the relevant entity carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade.

[F4](6A) **[** The relevant entity is an "investment bank" if—

(a) it is both an IFPRU 730k firm and a full scope IFPRU investment firm, or

(b) it is designated by the Prudential Regulation Authority under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (dealing in investments as principal: designation by PRA).**]**

(7) See also section 269BC (which contains definitions of terms used in this section).

Textual Amendments

F3 S. 269B(5) substituted (retrospective to 26.3.2015) by Finance (No. 2) Act 2015 (c. 33), s. 20(9)**(10)(a)**

F4 S. 269B(6A) inserted (retrospective to 26.3.2015) by Finance (No. 2) Act 2015 (c. 33), s. 20(9)**(10)(b)**

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Changes to legislation: *There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 7A. (See end of Document for details)*

269BA Excluded entities

(1) For the purposes of section 269B "excluded entity" means any of the following entities—

(a) an insurance company or an insurance special purpose vehicle;

(b) an entity which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or insurance special purpose vehicle which is a member of the group;

(c) an entity which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme;

(d) an investment trust;

(e) an entity which does not carry on any relevant regulated activities other than asset management activities;

(f) an exempt IFPRU commodities firm [F5]...;

(g) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives;

(h) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences—

(i) as principal with persons all or all but an insignificant proportion of whom are retail clients, or

(ii) with another person to enable the entity or other person to deal in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients;

(i) a society incorporated under the Friendly Societies Act 1992;

(j) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));

(k) a building society.

[F6](1A) **[** For the purposes of section 269B an entity is also an "excluded entity" if—

(a) the entity would fall within a relevant relieving provision but for one (and only one) line of business which it carries on,

(b) that line of business does not involve the relevant regulated activity described in the provision mentioned in section 269BB(a), and

(c) the entity's activities in that line of business would not, on their own, result in it being both an IFPRU 730k firm and a full scope IFPRU investment firm.

(1B) For the purposes of subsection (1A) the "relevant relieving provisions" are paragraphs (b), (c), (e), (g) and (h) of subsection (1). **]**

(2) For the meaning of "relevant regulated activity", see section 269BB.

See also section 269BC (which contains definitions of other terms used in this section).

Textual Amendments

F5 Words in s. 269BA(1)(f) omitted (retrospective to 26.3.2015) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 20(9)**(11)**

F6 S. 269BA(1A)(1B) inserted (15.9.2016) by Finance Act 2016 (c. 24), **s. 56(8)**

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269BB Relevant regulated activities

In this Part "relevant regulated activity" means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—

(a) article 5 (accepting deposits);
(b) article 14 (dealing in investments as principal);
(c) article 21 (dealing in investments as agent);
(d) article 25 (arranging deals in investments);
(e) article 40 (safeguarding and administering investments);
(f) article 61 (entering into regulated mortgage contracts).

269BC Banking companies: supplementary definitions

(1) This section contains definitions of terms used in sections 269B to 269BB (and this section).

(2) "Asset management activities" means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—

(a) acting as the operator of a collective investment scheme (within the meaning of Part 17 of FISMA 2000: see sections 235 and 237 of that Act),
(b) acting as a discretionary investment manager for clients none of which is a linked entity (see subsection (3)), and
(c) acting as an authorised corporate director.

(3) In subsection (2)(b) "linked entity", in relation to an entity ("E"), means—

(a) a member of the same group as E,
(b) a company in which a company which is a member of the same group as E has a major interest (within the meaning of Part 5 of CTA 2009: see section 473 of that Act), or
(c) a partnership the members of which include an entity—
    (i) which is a member of the same group as E, and
    (ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the relevant accounting period is at least a 40% share (see Part 17 of CTA 2009 for provisions about shares of partnership profits and losses).

"The relevant accounting period" means the accounting period referred to in section 269B(3).

(4) "Building society" has the same meaning as in the Building Societies Act 1986.

(5) "Insurance company" and "insurance special purpose vehicle" have the meanings given by sections 65 and 139 of FA 2012 respectively.

(6) "Partnership" includes—

(a) a limited liability partnership, and
(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

and "member", in relation to a partnership, is to be read accordingly.

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(7) The terms in subsection (8)—

(a) in relation to a PRA-authorised person, have the meaning given by the PRA Handbook;

(b) in relation to any other authorised person, have the meaning given by the FCA Handbook.

(8) The terms referred to in subsection (7) are—

“authorised corporate director”;

F7. . . . .

“contracts for differences”;

“discretionary investment manager”;

F7. . . . .

“exempt IFPRU commodities firm”;

F7. . . . .

“full scope IFPRU investment firm”;

“IFPRU 730k firm”;

“pension scheme”;

“principal”;

“retail client”.

F8(9) . . . .

(10) A company or partnership which would be an IFPRU 730k firm and a full scope IFPRU investment firm by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one for the purposes of section 269B.

(11) In subsection (7)—

“authorised person” and “PRA-authorised person” have the same meaning as in FISMA 2000;

“the FCA Handbook” means the Handbook made by the Financial Conduct Authority under FISMA 2000 (as that Handbook has effect from time to time);

“the PRA Handbook” means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time).

Textual Amendments

F7 Words in s. 269BC(8) omitted (retrospective to 26.3.2015) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 20(9)**(12)(a)**

F8 S. 269BC(9) omitted (retrospective to 26.3.2015) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 20(9)**(12)(b)**

“Group”

269BD Meaning of “group”

(1) In this Part “group” means a group for the purposes of—

(a) those provisions of international accounting standards relating to the preparation of consolidated financial statements (whether or not the company that is the parent within the meaning of those provisions ("the parent company") prepares financial statements under those standards), or

(b) in a case where subsection (2) applies, those provisions of US GAAP which relate to the preparation of consolidated financial statements.

(2) This subsection applies if—

(a) as at the end of a period of account of the parent company—

(i) the parent company is resident in a territory outside the United Kingdom,

(ii) generally accepted accounting practice for companies resident in that territory is or includes US GAAP, and

(iii) the parent company is a parent for the purposes of those provisions of US GAAP which relate to the preparation of consolidated financial statements (as well as being a parent for the purposes of the provisions mentioned in subsection (1)(a)), and

(b) the parent company prepares consolidated financial statements for the period of account under US GAAP.

(3) Accordingly, for the purposes of this Part a company is a member of a group if—

(a) it is the parent company in relation to the group, or

(b) it is a member of the group for the purposes of the provisions mentioned in subsection (1)(a) or (b) (as the case may be).

(4) In this section "US GAAP" means United States Generally Accepted Accounting Principles.

(5) Section 1127(1) and (3) (meaning of "generally accepted accounting practice") do not apply for the purposes of this section.

Power to make consequential changes

269BE Power to make consequential changes

(1) The Treasury may by regulations make such amendments of this Part as they consider appropriate in consequence of—

(a) any change made to, or replacement of, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (or any replacement);

(b) any change made to, or replacement of, the FCA Handbook or the PRA Handbook (or any replacement);

(c) any change in international accounting standards or US GAAP;

(d) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made).

(2) In this section—

"the FCA Handbook" and "the PRA Handbook" have the meaning given by section 269BC(11);

"US GAAP" has the meaning given by section 269BD(4).

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CHAPTER 3

RESTRICTIONS ON OBTAINING CERTAIN DEDUCTIONS

Introduction

269C Overview of Chapter

(1) This Chapter contains provision restricting the amount of certain deductions which a banking company may make in calculating its taxable total profits for an accounting period.

(2) Sections 269CA to 269CD contain the restrictions.

(3) Sections 269CE to 269CH contain exceptions to the restrictions.

(4) Section 269CK contains anti-avoidance provision.

(5) Sections 269CL to 269CN contain supplementary provision and definitions.

(6) For the meaning of "banking company", see section 269B.

Restrictions on obtaining certain deductions

269CA Restriction on deductions for trading losses

(1) This section has effect for determining the taxable total profits of a banking company for an accounting period.

(2) Any deduction made by the company for the accounting period in respect of a pre-2015 carried-forward trading loss may not exceed **[**[F9]25%**]** of the company's relevant trading profits for the accounting period.

Section 269CD contains provision for calculating a company's relevant trading profits for an accounting period (see step 5 in subsection (1) of that section).

(3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.

(4) In this Chapter "pre-2015 carried-forward trading loss", in relation to a company and an accounting period ("the current accounting period"), means a loss which—

(a) was made in a trade of the company in an accounting period ending before 1 April 2015, and

(b) is carried forward to the current accounting period under section 45 (carry forward of trade loss against subsequent trade profits).

(5) See also sections 269CE to 269CH (losses to which restrictions do not apply).

Textual Amendments

F9 Word in s. 269CA(2) substituted (with effect in accordance with s. 57(5) of the amending Act) by Finance Act 2016 (c. 24), **s. 57(2)**

269CB Restriction on deductions for non-trading deficits from loan relationships

(1) This section has effect for determining the taxable total profits of a banking company for an accounting period.

(2) Any deduction made by the company for the accounting period in respect of a pre-2015 carried-forward non-trading deficit may not exceed **[**[F10]25%**]** of the company's relevant non-trading profits for the accounting period.

Section 269CD contains provision for calculating a company's relevant non-trading profits for an accounting period (see step 6 in subsection (1) of that section).

(3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.

(4) In this Chapter "pre-2015 carried-forward non-trading deficit", in relation to a company and an accounting period ("the current accounting period"), means a non-trading deficit—

(a) which the company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending before 1 April 2015, and

(b) which is carried forward under section 457 of that Act (carry forward of deficits to accounting periods after deficit period) to be set off against non-trading profits of the current accounting period.

(5) In subsection (4) "non-trading profits" has the same meaning as in section 457 of CTA 2009.

(6) See also sections 269CE to 269CH (losses to which restrictions do not apply).

Textual Amendments

F10 Word in s. 269CB(2) substituted (with effect in accordance with s. 57(5) of the amending Act) by Finance Act 2016 (c. 24), **s. 57(3)**

269CC Restriction on deductions for management expenses etc

(1) This section has effect for determining the taxable total profits of a banking company for an accounting period.

(2) Any deduction made by the company for the accounting period in respect of pre-2015 carried-forward management expenses may not exceed the relevant maximum (see subsection (7)).

(3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.

(4) In this Chapter "pre-2015 carried-forward management expenses", in relation to a company and an accounting period ("the current accounting period"), means amounts falling within subsection (5) or (6).

See also sections 269CE to 269CH (losses to which restrictions do not apply).

(5) The amounts within this subsection are amounts—

(a) which fall within subsection (2) of section 1223 of CTA 2009 (carrying forward expenses of management and other amounts),

(b) which—
   (i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending before 1 April 2015, or
   (ii) in the case of qualifying charitable donations, were made in such an accounting period, and
(c) which are treated by section 1223(3) of CTA 2009 as expenses of management deductible for the current accounting period.

(6) The amounts within this subsection are amounts of loss which—
(a) were made in an accounting period ending before 1 April 2015, and
(b) are treated by section 63(3) (carrying forward certain losses made by company with investment business which ceases to carry on UK property business) as expenses of management deductible for the current accounting period for the purposes of Chapter 2 of Part 16 of CTA 2009.

(7) The relevant maximum is determined as follows—

Step 1 Calculate **[**[F11]25%**]** of the company's relevant profits for the accounting period. Section 269CD contains provision for calculating a company's relevant profits for an accounting period.

Step 2 Calculate the sum of any deductions made by the company for the accounting period which are—
(a) deductions in respect of a pre-2015 carried-forward trading loss, or
(b) deductions in respect of a pre-2015 carried-forward non-trading deficit.

Step 3 The relevant maximum is the difference between the amount given by step 1 and the amount given by step 2. If the amount given by step 1 does not exceed the amount given by step 2, the relevant maximum is nil.

Textual Amendments

F11 Word in s. 269CC(7) substituted (with effect in accordance with s. 57(5) of the amending Act) by Finance Act 2016 (c. 24), **s. 57(4)**

269CD Relevant profits

(1) To determine a company's relevant profits for an accounting period—

Step 1 Calculate the company's total profits for the accounting period, ignoring any pre-2015 carried-forward trading losses or pre-2015 carried-forward non-trading deficits. (If the amount given by this step is not greater than nil, no further steps are to be taken: see sections 269CA(3), 269CB(3) and 269CC(3).)

Step 2 Divide the amount given by step 1 into profits that are profits of a trade of the company (the company's "trade profits") and profits that are not profits of a trade of the company (the company's "non-trading profits").

Step 3 Calculate the proportion ("the trading proportion") of the amount given by step 1 that consists of the company's trade profits and the proportion ("the non-trading proportion") of that amount that consists of its non-trading profits.

Step 4 Calculate the sum of any amounts which can be relieved against the company's total profits for the accounting period (as calculated in accordance with step 1), ignoring the amount of any excluded deductions for the accounting period (see subsection (2)).

Step 5 Deduct the trading proportion of the amount given by step 4 from the company's trade profits for the accounting period. The amount given by this step is the company's relevant trading profits for the accounting period. If the amount given by this step is not greater than nil, the company's relevant trading profits for the accounting period are nil.

Step 6 Deduct the non-trading proportion of the amount given by step 4 from the company's non-trading profits for the accounting period. The amount given by this step is the company's relevant non-trading profits for the accounting period. If the amount given by this step is not greater than nil, the company's relevant non-trading profits for the accounting period are nil.

Step 7 The company's relevant profits for the accounting period are the sum of its relevant trading profits for the accounting period and its relevant non-trading profits for the accounting period.

(2) The following are "excluded deductions" in relation to an accounting period ("the current accounting period")—

(a) a deduction made in respect of pre-2015 carried-forward management expenses;

(b) a deduction for relief under section 37 (relief for trade losses against total profits) in relation to a loss made in an accounting period after the current accounting period;

(c) a deduction for relief under section 260(3) of CAA 2001 (special leasing of plant or machinery: carry-back of excess allowances) in relation to capital allowances for an accounting period after the current accounting period;

(d) a deduction for relief under section 459 of CTA 2009 (non-trading deficits from loan relationships) in relation to a deficit for a deficit period after the current accounting period.

Losses to which restrictions do not apply

269CE Losses arising before company began banking activity

(1) In this section "the first banking accounting period", in relation to a company, means the accounting period in which the company first begins to carry on a relevant regulated activity.

(2) References in this Chapter to a pre-2015 carried-forward trading loss do not include a loss which was made in a trade of a company in an accounting period ending before the first banking accounting period.

(3) References in this Chapter to a pre-2015 carried-forward non-trading deficit do not include a non-trading deficit which a company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending before the first banking accounting period.

(4) References in this Chapter to pre-2015 carried-forward management expenses, in relation to a company, do not include—

(a) any amounts falling within section 269CC(5) which—

(i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending before the first banking accounting period, or

(ii) in the case of qualifying charitable donations, were made in an accounting period ending before the first banking accounting period, or

(b) any amounts of loss falling within section 269CC(6) which were made in an accounting period ending before the first banking accounting period.

(5) Section 269CL contains provision for determining when a company first begins to carry on a relevant regulated activity.

269CF Losses arising in company's start-up period

(1) References in this Chapter to a pre-2015 carried-forward trading loss do not include a loss which was made in a trade of a company in an accounting period ending in the company's start-up period.

(2) References in this Chapter to a pre-2015 carried-forward non-trading deficit do not include a non-trading deficit which a company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending in the company's start-up period.

(3) References in this Chapter to pre-2015 carried-forward management expenses, in relation to a company, do not include—

(a) any amounts falling within section 269CC(5) which—

(i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending in the company's start-up period, or

(ii) in the case of qualifying charitable donations, were made in such an accounting period, or

(b) any amounts of loss falling within section 269CC(6) which were made in an accounting period ending in the company's start-up period.

(4) For the purposes of this Chapter any amounts which, by virtue of subsections (1) to (3), are not relevant carried-forward losses of a company are to be regarded as having been taken into account in determining the taxable total profits of the company for accounting periods ending before 1 April 2015 before any amounts which are relevant carried-forward losses of the company.

(5) Subsection (6) applies where a company has an accounting period (“the straddling period”) beginning before, and ending after, the last day of its start-up period.

(6) For the purposes of this section—

(a) so much of the straddling period as falls within the start-up period, and so much of the straddling period as falls outside the start-up period, are treated as separate accounting periods, and

(b) any relevant carried-forward losses of the company for the straddling period are apportioned to the two separate accounting periods—

(i) in accordance with section 1172 (time basis), or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

(7) In subsection (6)(b) the reference to any relevant carried-forward losses of the company “for” the straddling period is a reference to—

(a) any pre-2015 carried-forward trading loss which was made in a trade of the company in the straddling period,

(b) any pre-2015 carried-forward non-trading deficit which the company had from its loan relationships for the straddling period, and

(c) any pre-2015 carried-forward management expenses which are referable to, or were made in, the straddling period (as the case may be).

(8) For provision about determining a company's start-up period, see section 269CG.

269CG The "start-up period"

(1) In this Chapter the "start-up period", in relation to a company ("company C"), means the period of 5 years beginning with the day on which company C first begins to carry on a relevant regulated activity ("the start-up day").

This is subject to the following provisions of this section.

(2) If on the start-up day—

(a) company C is a member of a group,

(b) there are one or more other members of the group that have carried on a relevant regulated activity while a member of the group, and

(c) none of those members first began to carry on such an activity more than 5 years before the start-up day,

company C's start-up period is the period beginning with the start-up day and ending with the relevant group period.

(3) The "relevant group period", in relation to a group, means the period of 5 years beginning with the earliest day on which any member of the group first began to carry on a relevant regulated activity.

(4) If on the start-up day—

(a) company C is a member of a group,

(b) there are one or more other members of the group that have carried on a relevant regulated activity while a member of the group, and

(c) any of those members first began to carry on such an activity more than 5 years before the start-up day,

company C does not have a start-up period.

(5) This subsection applies if—

(a) on a day falling within company C's start-up period ("the relevant day"), company C becomes a member of a group,

(b) one or more of the members of the group which on the relevant day carry on a relevant regulated activity first began to do so before the beginning of company C's start-up period, and

(c) the relevant regulated activities carried on by company C do not form a significant proportion of the relevant regulated activities carried on immediately after the relevant day by the members of the group as a whole.

(6) Where subsection (5) applies, company C's start-up period—

(a) in the case where any of the members of the group first began to carry on a relevant regulated activity more than 5 years before the relevant day, ends immediately before the relevant day;

(b) in any other case, ends with the relevant group period.

(7) This subsection applies if—

(a) on a day falling within company C's start-up period ("the relevant day"), another company that carries on a relevant regulated activity ("the new member") becomes a member of a group of which company C is a member,
(b) the new member first began to carry on a relevant regulated activity before the beginning of company C's start-up period, and
(c) the relevant regulated activities carried on by the new member form a significant proportion of the relevant regulated activities carried on immediately after the relevant day by the members of the group as a whole.

(8) Where subsection (7) applies, company C's start-up period—
(a) in the case where the new member first began to carry on a relevant regulated activity more than 5 years before the relevant day, ends immediately before the relevant day;
(b) in any other case, ends with the relevant group period.

(9) Any reference in this section to being, or becoming, a member of a group includes a reference to being, or becoming, a member of a partnership; and references to the "relevant group period" are to be read accordingly.

(10) Section 269CL contains provision for determining when a company first begins to carry on a relevant regulated activity.

269CH Losses covered by carried-forward loss allowance

(1) This section applies to a banking company if—
(a) it is a building society, or
(b) an amount of carried-forward loss allowance is allocated to the company by a building society in accordance with section 269CI or 269CJ.

(2) If a banking company to which this section applies has an amount of carried-forward loss allowance (see subsection (5)), the company may designate as unrestricted losses any losses which, in relation to any accounting period, would (in the absence of this section) be relevant carried-forward losses.

(3) A loss designated under this section as an unrestricted loss is to be treated for the purposes of this Chapter as if it were not a relevant carried-forward loss.

(4) The amount of losses which a company may designate at any time must not exceed the amount of carried-forward loss allowance which the company has at that time.

(5) The amount of carried-forward loss allowance which a company has at any time is the difference between the company's maximum available carried-forward loss allowance and the total amount of losses designated by the company under this section before that time.

(6) The "maximum available carried-forward loss allowance" is—
(a) in the case of a building society which has not made an allocation under section 269CI, £25,000,000;
(b) in the case of a building society which has made an allocation under section 269CI, the amount given by—

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$$(A - B) + C$$

where—

A is £25,000,000,

B is the sum of—

(a) any amounts which it has allocated to another company under section 269CI, and

(b) any amounts allocated to another company under section 269CJ which immediately before the allocation were amounts of carried-forward loss allowance which the building society had, and

C is the sum of any amounts allocated to the building society under section 269CJ;

(c) in the case of any other company, the total amount of carried-forward loss allowance allocated to the company under section 269CI or 269CJ.

(7) References in this Chapter to an amount of carried-forward loss allowance allocated to a company are references to an amount allocated to the company under section 269CI or 269CJ.

(8) For the meaning of "relevant carried-forward loss", see section 269CN.

(9) For information about the procedure for making a designation under this section, see Schedule 18 to FA 1998, in particular Part 9E of that Schedule.

269CI Allocation of carried-forward loss allowance within a group

(1) This section applies where a building society—

(a) is a member of a group, and

(b) has an amount of carried-forward loss allowance (see section 269CH(5)).

(2) The building society may allocate some or all of that amount of carried-forward loss allowance to any other member of the group which is a banking company.

(3) Where a building society makes an allocation under subsection (2), it must give HMRC a statement (a "statement of allocation") which specifies—

(a) the amount of carried-forward loss allowance which the building society had immediately before it made the allocation,

(b) the companies ("the relevant companies") to which an amount of carried-forward loss allowance has been allocated,

(c) the amount of carried-forward loss allowance allocated to each of the relevant companies, and

(d) the total amount of carried-forward loss allowance allocated by the building society.

(4) The statement of allocation must be given to HMRC on or before—

(a) the first day after the allocation on which the building society, or any of the relevant companies, delivers a company tax return which includes a designation made under section 269CH, or

(b) if earlier, the first day after the allocation on which a company tax return of the building society, or any of the relevant companies, is amended so as to include such a designation.

This is subject to subsection (5).

(5) An officer of Revenue and Customs may provide that the statement of allocation may be given to HMRC on or before a later day specified by the officer.

(6) An allocation made under subsection (2) is not effective unless the requirements of this section have been complied with.

(7) A statement of allocation that has been given to HMRC under this section may not be amended or withdrawn.

This is subject to section 269CJ.

269CJ Re-allocation of carried-forward loss allowance

(1) This section applies where—

(a) a building society is a member of a group,

(b) the building society has given HMRC a statement of allocation in accordance with section 269CI,

(c) the building society, or any other member of the group that is a banking company, (the "designating company") would, if it had an amount (or an additional amount) of carried-forward loss allowance, be able to designate an amount of losses under section 269CH equal to that amount, and

(d) that amount is greater than the amount of carried-forward loss allowance which the building society could allocate under section 269CI.

(2) In this section the "available carried-forward loss allowance" means the total of any amounts of carried-forward loss allowance which any member of the group, other than the designating company, has (see section 269CH(5)).

(3) The building society may—

(a) allocate some or all of the available carried-forward loss allowance to the designating company, and

(b) provide that, to the extent that any of the amount allocated to the designating company under this subsection is an amount of carried-forward loss allowance which, immediately before the allocation, was an amount allocated to another company, that amount is no longer allocated to that other company.

(4) Where a building society makes an allocation under subsection (3), it must give HMRC a statement (a "revised statement of allocation") which specifies—

(a) the amount of the available carried-forward loss allowance immediately before the allocation,

(b) the companies which had an amount of carried-forward loss allowance immediately before the allocation, and the amount of carried-forward loss allowance which each of those companies had at that time, and

(c) the companies which have an amount of carried-forward loss allowance immediately after the allocation ("the relevant companies"), and the amount of carried-forward loss allowance which each of those companies has.

(5) The revised statement of allocation must be given to HMRC on or before—

(a) the first day after the allocation on which any of the relevant companies delivers a company tax return which includes a designation made under section 269CH, or

(b) if earlier, the first day after the allocation on which a company tax return of any of the relevant companies is amended so as to include such a designation.

This is subject to subsection (6).

(6) An officer of Revenue and Customs may provide that the revised statement of allocation may be given to HMRC on or before a later day specified by the officer.

(7) An allocation made under subsection (3) is not effective unless the requirements of this section have been complied with.

(8) Except as provided for by this section, a revised statement of allocation that has been given to HMRC under this section may not be amended or withdrawn.

Anti-avoidance

269CK Profits arising from tax arrangements to be disregarded

(1) This section applies if conditions A to C are met.

(2) Condition A is that—

(a) the amount given by step 1 in section 269CD(1) as the total profits of a banking company for an accounting period includes profits which arise to the banking company as a result of any arrangements ("the tax arrangements"), and

(b) in the absence of those profits ("the additional profits") any deduction which the banking company would be entitled to make for the accounting period in respect of any relevant carried-forward losses would be reduced.

(3) Condition B is that the main purpose, or one of the main purposes, of the tax arrangements is to secure a relevant corporation tax advantage—

(a) for the banking company, or

(b) if there are any companies connected with that company, for the banking company and those connected companies (taken together).

(4) In this section "relevant corporation tax advantage" means a corporation tax advantage involving—

(a) the additional profits, and

(b) the deduction of any relevant carried-forward losses from those profits.

(5) Condition C is that, at the time when the tax arrangements were entered into, it would have been reasonable to assume that the tax value of the tax arrangements would be greater than the non-tax value of the tax arrangements.

(6) The "tax value" of the tax arrangements is the total value of—

(a) the relevant corporation tax advantage, and

(b) any other economic benefits derived by—

(i) the banking company, or

(ii) if there are any companies connected with that company, the banking company and those connected companies (taken together),

as a result of securing the relevant corporation tax advantage.

(7) The "non-tax value" of the tax arrangements is the total value of any economic benefits, other than those falling within subsection (6)(a) or (b), derived by—

(a) the banking company, or

(b) if there are any companies connected with that company, the banking company and those connected companies (taken together),

as a result of the tax arrangements.

(8) If this section applies, the additional profits are not to be taken into account in calculating the banking company's relevant profits for the accounting period (see section 269CD).

(9) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"corporation tax advantage" means—

(a) a relief from corporation tax or increased relief from corporation tax,

(b) a repayment of corporation tax or increased repayment of corporation tax,

(c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax,

(d) the avoidance of a possible assessment to corporation tax, or

(e) the deferral of a payment of corporation tax or advancement of a repayment of corporation tax.

Supplementary

269CL When a company first begins to carry on relevant regulated activities

(1) For the purposes of this Chapter, a company first begins to carry on a relevant regulated activity on a particular day if the company—

(a) begins to carry on a relevant regulated activity on that day, and

(b) has not carried on any relevant regulated activity before that day.

This is subject to subsection (2).

(2) Where—

(a) there is a transfer of a trade, and

(b) immediately before the transfer the predecessor carried on a relevant regulated activity,

the successor is to be treated as having first begun to carry on a relevant regulated activity on the day on which the predecessor first began to carry on such an activity.

(3) Section 940B (meaning of "transfer of a trade" etc) applies for the purposes of this section as it applies for the purposes of Chapter 1 of Part 22.

269CM Joint venture companies

(1) Where a company ("the joint venturer"), together with one or more other persons, jointly controls another company that is a joint venture ("the joint venture company"),

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the joint venture company is to be treated for the purposes of this Chapter as a member of any group of which the joint venturer is a member.

(2) References in subsection (1) to a joint venture and to jointly controlling a company that is a joint venture are to be read in accordance with those provisions of international accounting standards which relate to joint ventures.

269CN Other definitions

In this Chapter—

"banking company" has the meaning given by section 269B;

"building society" has the same meaning as in the Building Societies Act 1986 **[**[F12]except that it also includes a bank established under the Savings Bank (Scotland) Act 1819**]**;

"company tax return" has the same meaning as in Schedule 18 to FA 1998;

"group" has the meaning given by section 269BD;

"HMRC" means Her Majesty's Revenue and Customs;

"partnership" includes—

(a) a limited liability partnership, and

(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

and "member", in relation to a partnership, is to be read accordingly;

"pre-2015 carried-forward management expenses" has the meaning given by section 269CC(4);

"pre-2015 carried-forward non-trading deficit" has the meaning given by section 269CB(4);

"pre-2015 carried-forward trading loss" has the meaning given by section 269CA(4);

"relevant carried-forward loss" means—

(a) a pre-2015 carried-forward trading loss,

(b) a pre-2015 carried-forward non-trading deficit, or

(c) any pre-2015 carried-forward management expenses;

"relevant non-trading profits", in relation to a company, means the amount given by step 6 in section 269CD(1);

"relevant profits", in relation to a company, means the amount given by step 7 in section 269CD(1);

"relevant regulated activity" has the meaning given by section 269BB;

"relevant trading profits", in relation to a company, means the amount given by step 5 in section 269CD(1);

"start-up period", in relation to a company, has the meaning given by section 269CG.**]**

Textual Amendments

F12 Words in s. 269CN inserted (retrospective to 1.4.2015) by Finance (No. 2) Act 2015 (c. 33), **s. 19(1)**(2)

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[F13CHAPTER 4

SURCHARGE ON BANKING COMPANIES

Textual Amendments

F13 Pt. 7A Ch. 4 inserted (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**

Overview

269D Overview of Chapter

(1) This Chapter contains provision for, and in connection with, a surcharge on the profits of banking companies.

(2) Section 269DA provides for a sum to be charged on the surcharge profits of a banking company, in excess of the company's surcharge allowance, as if it were an amount of corporation tax.

(3) Section 269DB defines "non-banking group relief" for the purposes of calculating a company's surcharge profits.

(4) Section 269DC defines "non-banking or pre-2016 loss relief" for the purposes of calculating a company's surcharge profits.

(5) Section 269DD defines "relevant transferred-out gain" and "non-banking transferred-in gain" for the purposes of calculating a company's surcharge profits.

(6) Sections 269DE to 269DK contain provision for, and in connection with, determining a company's surcharge allowance.

(7) Sections 269DL and 269DM apply enactments relating to corporation tax to sums charged under section 269DA, modify those enactments and make other provision about administration and double taxation.

(8) Section 269DN contains anti-avoidance provision.

(9) Section 269DO contains provision about the interpretation of this Chapter.

(10) Chapter 2 (key definitions) contains provision about the interpretation of this Part that is relevant to this Chapter (see, in particular, section 269B (read with section 269DO(2) to (7)) for the meaning of "banking company" and section 269BD for the meaning of "group").

The surcharge

269DA Surcharge on banking companies

(1) If a company is a banking company in relation to an accounting period (a "chargeable accounting period"), a sum equal to 8% of its surcharge profits for the period, so far as they exceed its surcharge allowance for the period, is to be charged on the company as if it were an amount of corporation tax chargeable on the company.

(2) For the purposes of this Chapter, a company's "surcharge profits" for a chargeable accounting period are—

$$TTP + NBGR + NBPLR + RTOG - NBTIG - RDEC$$

where—

"TTP" is the taxable total profits of the company of the chargeable accounting period;

"NBGR" is the amount (if any) of non-banking group relief that is given in determining those taxable total profits (see section 269DB);

"NBPLR" is the amount (if any) of non-banking or pre-2016 loss relief (see section 269DC);

"RTOG" means the sum of any relevant transferred-out gains (see section 269DD);

"NBTIG" means the sum of any non-banking transferred-in gains (see section 269DD);

"RDEC" means any amount brought into account by the company under Chapter 6A of Part 3 of CTA 2009 (trade profits: R&D expenditure credits) as a receipt in calculating the profits of a trade for the chargeable accounting period.

(3) A company's "surcharge allowance" for a chargeable accounting period is to be determined in accordance with section 269DE where, at any time in that period—

(a) the company is a member of a group, and

(b) one or more other banking companies are members of that group.

(4) Otherwise, a company's "surcharge allowance" for a chargeable accounting period is to be determined in accordance with section 269DJ.

Non-banking group relief

269DB Meaning of "non-banking group relief"

(1) In section 269DA(2), "non-banking group relief" means group relief that relates to losses or other amounts that the surrendering company has for a surrender period in relation to which it is not—

(a) a banking company, or

(b) an EEA banking company.

(2) The surrendering company is an "EEA banking company", in relation to the surrender period, if—

(a) the group relief relates to surrenderable amounts under Chapter 3 of Part 5 (surrenders made by non-UK resident company resident or trading in the EEA), and

(b) condition A or B is met.

(3) Condition A is that the surrendering company would be a banking company in relation to the surrender period if—

(a) it were UK resident,

(b) any activities carried on by the surrendering company in an EEA territory were carried on in the United Kingdom,

(c) where it would be required to be an authorised person for the purposes of FISMA 2000 in order to carry on those activities, it were an authorised person with permission to carry on those activities, and

(d) where those activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 269BB(b) to (f), as a result of carrying on those activities and having such permission it would be an IFPRU 730k firm and a full scope IFPRU investment firm.

(4) Condition B is that the surrendering company is a member of a partnership and the surrendering company would be a banking company if—

(a) the surrendering company and the partnership were UK resident,

(b) any activities carried on by the partnership in an EEA territory were carried on in the United Kingdom,

(c) where the partnership would be required to be an authorised person for the purposes of FISMA 2000 in order to carry on those activities, the partnership were an authorised person with permission to carry on those activities, and

(d) where those activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 269BB(b) to (f), as a result of carrying on those activities and having such permission the partnership would be an IFPRU 730k firm and a full scope IFPRU investment firm.

(5) For the purposes of determining whether condition A or B is met, references in section 269B to an accounting period are to be read as references to the surrender period.

(6) The Treasury may by regulations make provision for, or in connection with, treating companies specified or described in the regulations as being, or as not being, EEA banking companies for the purposes of this section.

(7) In this section—

"EEA territory" has the same meaning as in Chapter 3 of Part 5 (see section 112);

"surrenderable amounts", "surrendering company" and "surrender period" have the same meaning as in Part 5 (see section 188(1)).

(8) Section 269BC (banking companies: supplementary definitions) has effect for the purposes of this section.

Non-banking or pre-2016 loss relief

269DC Meaning of "non-banking or pre-2016 loss relief"

(1) In section 269DA(2), "non-banking or pre-2016 loss relief" means the aggregate of—

(a) any amounts that are deducted in determining the taxable total profits of the company of the chargeable accounting period, in respect of—

(i) a non-banking or pre-2016 carried-forward trading loss,

(ii) a non-banking or pre-2016 carried-forward non-trading deficit,

(iii) non-banking or pre-2016 carried-forward management expenses,

(iv) a non-banking or pre-2016 carried-forward UK property loss,

(v) a non-banking or pre-2016 carried-forward overseas property loss,

(vi) a non-banking or pre-2016 carried-forward excess capital allowance on special leasing,

(vii) a non-banking or pre-2016 carried-forward miscellaneous loss, or

(viii) a non-banking or pre-2016 carried-forward capital loss, and

(b) any used amount, for the chargeable accounting period, in respect of a non-banking or pre-2016 non-trading loss on intangible fixed assets.

(2) For the purposes of this section—

(a) a "non-banking" accounting period is an accounting period in relation to which the company was not a banking company, and

(b) a "pre-2016" accounting period is an accounting period of the company ending before 1 January 2016.

(3) "A non-banking or pre-2016 carried-forward trading loss" means a loss which—

(a) was made in a trade of the company in a non-banking or pre-2016 accounting period, and

(b) is carried forward to the chargeable accounting period under section 45 (carry forward of trade loss against subsequent trade profits).

(4) "A non-banking or pre-2016 carried-forward non-trading deficit" means a non-trading deficit—

(a) which the company had from its loan relationships under section 301(6) of CTA 2009 for a non-banking or pre-2016 accounting period, and

(b) which is carried forward under section 457 of that Act (carry forward of deficits to accounting periods after deficit period) to be set off against non-trading profits of the chargeable accounting period.

(5) In subsection (4), "non-trading profits" has the same meaning as in section 457 of CTA 2009.

(6) "Non-banking or pre-2016 management expenses" means amounts that fall within subsection (7) or (8).

(7) The amounts within this subsection are amounts—

(a) which fall within subsection (2) of section 1223 of CTA 2009 (carry forward of expenses of management and other amounts),

(b) which—

(i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to a non-banking or pre-2016 accounting period, or

(ii) in the case of qualifying charitable donations, were made in such an accounting period, and

(c) which are treated by section 1223(3) of CTA 2009 as expenses of management deductible for the chargeable accounting period.

(8) The amounts within this subsection are amounts of loss which—

(a) were made in a non-banking or pre-2016 accounting period, and

(b) are treated by section 63(3) (carry forward of certain losses made by company with investment business which ceases to carry on UK property business) as expenses of management deductible for the chargeable accounting period for the purposes of Chapter 2 of Part 16 of CTA 2009.

(9) "A non-banking or pre-2016 carried-forward UK property loss" means a loss which—

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(a) was made by the company in a UK property business in a non-banking or pre-2016 accounting period, and

(b) is carried forward to the chargeable accounting period under section 62(5) (carry forward of UK property business loss to be treated as loss of subsequent accounting period).

(10) "A non-banking or pre-2016 carried-forward overseas property loss" means a loss which—

(a) was made by the company in an overseas property business in a non-banking or pre-2016 accounting period, and

(b) is carried forward to the chargeable accounting period under section 66(3) (carry forward of overseas property business loss against subsequent losses of that kind).

(11) "A non-banking or pre-2016 carried-forward excess capital allowance on special leasing" means an amount of capital allowance—

(a) to which the company was entitled for a non-banking or pre-2016 accounting period, and

(b) which must be deducted under section 260 of CAA 2001 (special leasing: corporation tax, excess allowance) from income of the company for the chargeable accounting period.

(12) "A non-banking or pre-2016 carried-forward miscellaneous loss" means a loss which—

(a) was made by the company in a transaction within subsection (2) of section 91 (relief for losses from miscellaneous transactions) in a non-banking or pre-2016 accounting period, and

(b) is carried forward to the chargeable accounting period under subsection (6) of that section (carry forward of miscellaneous losses against miscellaneous income).

(13) "A non-banking or pre-2016 carried-forward capital loss" means an allowable loss which—

(a) accrued to the company in a non-banking or pre-2016 accounting period or as a result of a non-banking loss transfer, and

(b) is to be deducted under section 8(1)(b) of TCGA 1992 (deduction of allowable losses from previous accounting periods) from the total amount of chargeable gains accruing to the company in the chargeable accounting period.

(14) A "non-banking loss transfer" is a transfer to the company of the whole or any part of an allowable loss, by an election under section 171A of TCGA 1992 (reallocation within group), from a non-banking company.

(15) In subsection (14) "non-banking company" means a company that is not a banking company at the time that the allowable loss, or such part of it as the election transfers, is treated as accruing by virtue of the election (see, in particular, section 171B(3) of TCGA 1992).

(16) The company has "a non-banking or pre-2016 non-trading loss on intangible fixed assets" if it had a non-trading loss under section 751 of CTA 2009 (non-trading gains and losses) on intangible fixed assets in the relevant accounting period.

(17) The "relevant accounting period" is—

(a) if in relation to any accounting period beginning on or after 1 January 2016 the company was not a banking company, its most recent non-banking accounting period, and

(b) in any other case, the company's last pre-2016 accounting period (if any).

(18) If all or part of the non-banking or pre-2016 non-trading loss on intangible fixed assets is carried forward as a non-trading debit to the accounting period following the relevant accounting period under section 753(3) of CTA 2009 ("the initially carried-forward debit"), there is a "used amount", for the chargeable accounting period, in respect of that loss if—

(a) the initially carried-forward debit exceeds the aggregate of any used amounts, for any previous chargeable accounting periods, in respect of that loss, and

(b) there are any non-trading credits for the chargeable accounting period or a non-trading loss on intangible fixed assets is to be set off against the company's total profits for that period under section 753(1) of that Act.

(19) If there is a used amount for the chargeable accounting period in respect of the non-banking or pre-2016 non-trading loss on intangible fixed assets it is to be calculated in accordance with subsections (20) and (21).

(20) If the remaining carried-forward debit for the chargeable accounting period (see subsection (22)) does not exceed the aggregate of—

(a) any non-trading credits for that period, and

(b) any amount of non-trading loss on intangible fixed assets that is to be set off against the profits of the company for that period under section 753(1) of CTA 2009,

the used amount, for that period, in respect of the non-banking or pre-2016 non-trading loss on intangible fixed assets is equal to the remaining carried-forward debit for that period.

(21) If the remaining carried-forward debit for the chargeable accounting period exceeds the aggregate of any amounts within paragraph (a) or (b) of subsection (20), the used amount, for that period, in respect of the non-banking or pre-2016 non-trading loss on intangible fixed assets is equal to the aggregate of those amounts.

(22) In subsections (18) to (21)—

"non-trading credit" means a non-trading credit in respect of intangible fixed assets for the purposes of Part 8 of CTA 2009;

"the remaining carried-forward debit", in relation to the chargeable accounting period, means the amount of the excess referred to in subsection (18)(a).

269DD Meaning of "relevant transferred-out gain" and "non-banking transferred-in gain"

(1) This section has effect for the purposes of section 269DA(2).

(2) A "relevant transferred-out gain" means a chargeable gain, or any part of a chargeable gain, that—

(a) is transferred from the company, by an election under section 171A of TCGA 1992 (reallocation within group), to a non-banking company, and

(b) would have accrued to the company in the chargeable accounting period but for that election.

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(3) A "non-banking transferred-in gain" means a chargeable gain, or any part of a chargeable gain, that—

(a) is transferred to the company, by an election under section 171A of TCGA 1992, from a non-banking company, and

(b) accrues to the company in the chargeable accounting period as a result of the election.

(4) In this section "non-banking company" means a company that is not a banking company at the time that the chargeable gain, or such part of it as the election transfers, is treated as accruing by virtue of the election (see, in particular, section 171B(3) of TCGA 1992).

The surcharge allowance

269DE Surcharge allowance for banking company in a group containing other banking companies

(1) This section makes provision as to the surcharge allowance of a banking company for a chargeable accounting period where, at any time in the period—

(a) the banking company is a member of a group, and

(b) one or more other banking companies are members of that group.

(2) The banking company's surcharge allowance for the chargeable accounting period is so much of its available surcharge allowance for the period as it specifies in its company tax return as its surcharge allowance for the period.

(3) The banking company's "available surcharge allowance" for the chargeable accounting period is the sum of—

(a) any amounts of group surcharge allowance allocated to the company for the period in accordance with sections 269DF to 269DI, and

(b) the appropriate amount of non-group surcharge allowance of the company for the period,

up to a limit of £25,000,000.

(4) The "appropriate amount of non-group surcharge allowance" of the company, for the chargeable accounting period, is—

$$\frac{DNG}{DAC} \times £25{,}000{,}000$$

where—

"DNG" is the number of days in the period on which the company is not a member of a group that has another member that is a banking company;

"DAC" is the total number of days in the period.

(5) If the chargeable accounting period is less than 12 months—

(a) the appropriate amount of non-group surcharge allowance, and

(b) the limit in subsection (3),

are proportionally reduced.

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Changes to legislation: *There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 7A. (See end of Document for details)*

(6) The sum of—

(a) any amount specified under subsection (2) for the chargeable accounting period, and

(b) any amount that is specified under section 371BI(2) of TIOPA 2010 (calculation of CFC charge on banking companies) for the period,

may not exceed the available surcharge allowance for the period.

(7) Section 269DK contains provision about what happens if the requirement in subsection (6) is not met.

269DF Group surcharge allowance and the nominated company

(1) This section applies where—

(a) two or more members of a group are banking companies, and

(b) all the banking companies that are members of the group together nominate (the "group allowance nomination") one of their number (the "nominated company") for the purposes of this Chapter.

(2) The "group surcharge allowance" for the group is £25,000,000 for each accounting period of the nominated company throughout which the group allowance nomination has effect.

(3) If the group allowance nomination takes effect, or ceases to have effect, part of the way through an accounting period of the nominated company, the "group surcharge allowance" for the group for that period is—

$$\frac{DN}{DAC} \times £25{,}000{,}000$$

where—

"DN" is the number of days in the accounting period on which a group allowance nomination that nominates the nominated company in relation to the group has effect, and

"DAC" is the total number of days in the accounting period.

(4) If an accounting period of the nominated company is less than 12 months, the group surcharge allowance for that period is proportionally reduced.

(5) A group allowance nomination must state the date on which it is to take effect (which may be earlier than the date the nomination is made).

(6) A group allowance nomination is of no effect unless it is signed by the appropriate person on behalf of each company that is, when the nomination is made, a member of the group and a banking company.

(7) A group allowance nomination ceases to have effect—

(a) immediately before the date on which a new group allowance nomination in respect of the group takes effect,

(b) upon the appropriate person in relation to a banking company that is a member of the group notifying an officer of Revenue and Customs, in writing, that the group allowance nomination is revoked, or

(c) upon the nominated company ceasing to be a banking company or ceasing to be a member of the group.

(8) The Commissioners for Her Majesty's Revenue and Customs may by regulations make further provision about a group allowance nomination or any notification under this section including, in particular, provision—

(a) about the form and manner in which a nomination or notification may be made,

(b) about how a nomination may be revoked and the form and manner of such revocation,

(c) requiring a person to notify HMRC of the making or revocation of a nomination,

(d) requiring a person to give information to HMRC in connection with the making or revocation of a nomination or the giving of a notification,

(e) imposing time limits in relation to making or revoking a nomination or giving a notification, and

(f) providing that a nomination or its revocation, or a notification, is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met.

(9) In this Chapter “the appropriate person”, in relation to a company, means—

(a) the proper officer of the company, or

(b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of this Chapter.

(10) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of subsection (9) as they apply for the purposes of that section.

269DG Group allowance allocation statement: submission

(1) A company must submit a group allowance allocation statement to HMRC for each of its accounting periods in which it is the nominated company in relation to a group.

This is subject to subsections (2) and (3).

(2) If a company ceases to be the nominated company in relation to a group before it submits a group allowance allocation statement to HMRC for an accounting period—

(a) that company may not submit the statement, and

(b) the company that is for the time being the nominated company in relation to the group must do so.

(3) But if a new group allowance nomination in respect of the group takes effect on a date before it is made, that does not affect the validity of the submission of any group allowance allocation statement submitted before the date the new nomination is made.

(4) A group allowance allocation statement under this section must be received by HMRC within 12 months of the end of the accounting period, of the nominated company, to which it relates.

(5) A group allowance allocation statement under this section may be submitted at a later time if an officer of Revenue and Customs allows it.

(6) A group allowance allocation statement under this section must comply with the requirements of section 269DI.

269DH Group allowance allocation statement: submission of revised statement

(1) This section applies if a group allowance allocation statement has been submitted under section 269DG, or this section, in respect of an accounting period of a company that is, or was, a nominated company ("the nominee's accounting period").

(2) A revised group allowance allocation statement in respect of the nominee's accounting period may be submitted to HMRC by the company that is for the time being the nominated company in relation to the group.

(3) But if a new group allowance nomination in respect of the group takes effect on a date before it is made, that does not affect the validity of the submission of any revised group allowance allocation statement submitted before the date the new nomination is made.

(4) A revised group allowance allocation statement may be submitted on or before whichever is the latest of the following dates—

(a) the last day of the period of 36 months after the end of the nominee's accounting period;

(b) if notice of enquiry (within the meaning of Schedule 18 to FA 1998) is given into a relevant company tax return, 30 days after the enquiry is completed;

(c) if, after such an enquiry, an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after the notice of amendment is issued;

(d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(5) A revised group allowance allocation statement may be submitted at a later time if an officer of Revenue and Customs allows it.

(6) In this section "relevant company tax return" means a company tax return of a banking company for a chargeable accounting period for which an amount of group surcharge allowance was, or could have been, allocated by a previous group allowance allocation statement in respect of the nominee's accounting period.

(7) The references in subsection (4) to an enquiry into a relevant company tax return do not include an enquiry resulting from an amendment of such a return where—

(a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998 (enquiry into amendments when time limit for enquiry into return as originally submitted is passed), and

(b) the amendment relates only to the allocation of group surcharge allowance for the nominee's accounting period.

(8) A group allowance allocation statement under this section must comply with the requirements of section 269DI.

269DI Group allowance allocation statement: requirements and effect

(1) This section applies in relation to a group allowance allocation statement submitted under section 269DG or 269DH.

(2) The statement must be signed by the appropriate person in relation to the company giving the statement.

(3) The statement must—

(a) identify the group to which it relates,

(b) specify the accounting period, of the company that is or was the nominated company, to which the statement relates ("the nominee's accounting period"),

(c) specify the days in the nominee's accounting period on which that company was the nominated company in relation to the group or state that that company was the nominated company throughout the period,

(d) state the group surcharge allowance the group has for the nominee's accounting period,

(e) list one or more of the banking companies that were members of the group in the nominee's accounting period ("listed banking companies"),

(f) allocate amounts of the group surcharge allowance to the listed banking companies, and

(g) for each amount of group surcharge allowance allocated to a listed banking company, specify the chargeable accounting period of the listed banking company for which it is allocated.

(4) An amount of group surcharge allowance allocated to a listed banking company must be allocated to that company for a chargeable accounting period that falls wholly or partly in the nominee's accounting period.

(5) The maximum amount of group surcharge allowance that may be allocated, by the group allowance allocation statement, to a listed banking company for a chargeable accounting period of that company is—

$$\frac{DAP}{DNAP} \times GSA$$

where—

"DAP" is the number of days in the chargeable accounting period that are in the nominee's accounting period;

"DNAP" is the number of days in the nominee's accounting period;

"GSA" is the group surcharge allowance of the group for the nominee's accounting period.

(6) The sum of the amounts allocated to listed banking companies by the group allowance allocation statement may not exceed the group surcharge allowance for the nominee's accounting period.

(7) If a group allowance allocation statement is submitted that does not comply with subsection (5) or (6), the company that is, for the time being, the nominated company in relation to the group must submit a revised group allowance allocation statement

that does comply with those subsections within 30 days of the date on which the group allowance allocation statement that did not comply was submitted.

(8) If a group allowance allocation statement—

(a) complies with those subsections when it is submitted, but

(b) subsequently ceases to comply with either of them,

the company that is, for the time being, the nominated company in relation to the group must submit a revised group allowance allocation statement that does comply with those subsections within 30 days of the date on which the group allowance allocation statement ceased to comply with one of those subsections.

(9) If a company fails to comply with subsection (7) or (8), an officer of Revenue and Customs may by written notice to the company amend the group allowance allocation statement as the officer thinks fit for the purpose of making it comply with subsections (5) and (6).

(10) An officer of Revenue and Customs who issues a notice under subsection (9) to a company must, at the same time, send a copy of the notice to each of the listed banking companies.

(11) The time limits otherwise applicable to the amendment of a company tax return do not apply to any such amendment to the extent that it is made in consequence of a group allowance allocation statement being submitted in accordance with section 269DG or 269DH.

(12) The Commissioners for Her Majesty's Revenue and Customs may by regulations make further provision about a group allowance allocation statement including, in particular, provision—

(a) about the form of a statement and the manner in which it is to be submitted,

(b) requiring a person to give information to HMRC in connection with a statement,

(c) as to the circumstances in which a statement that is not received by the time specified in section 269DG(4) or 269DH(4) is to be treated as if it were so received, and

(d) as to circumstances in which a statement that does not comply with the requirements of this section is to be treated as if it did comply.

269DJ Surcharge allowance for company not in a group containing other banking companies

(1) This section makes provision as to the surcharge allowance of a banking company for a chargeable accounting period where section 269DE (surcharge allowance for banking company in a group containing other banking companies) does not apply.

(2) The banking company's surcharge allowance for the chargeable accounting period is so much of its available surcharge allowance for the period as it specifies in its company tax return as its surcharge allowance for that period.

(3) The banking company's "available surcharge allowance" for the chargeable accounting period is £25,000,000.

(4) If the chargeable accounting period is less than 12 months, the banking company's available surcharge allowance for the period is proportionally reduced.

Status: Point in time view as at 15/09/2016.
Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 7A. (See end of Document for details)

(5) The sum of—

(a) any amount specified under subsection (2) for the chargeable accounting period, and

(b) any amount that is specified under section 371BI(2) of TIOPA 2010 (calculation of CFC charge on banking companies) for the period,

may not exceed the available surcharge allowance for the period.

(6) Section 269DK contains provision about what happens if the requirement in subsection (5) is not met.

269DK Excessive specifications of available surcharge allowance

(1) This section applies if—

(a) a banking company's company tax return for a chargeable accounting period—

(i) specifies an amount under section 269DE(2) or 269DJ(2) as its surcharge allowance for the period, or

(ii) specifies an amount under section 371BI(2) of TIOPA 2010 (calculation of CFC charge on banking companies) for the period, and

(b) the requirement in section 269DE(6) or (as the case may be) 269DJ(5) is not met.

(2) The company must, so far at it may do so, amend the company tax return so that the requirement is met.

(3) If an officer of Revenue and Customs considers that, as a consequence of the requirement not being met, an insufficient sum has been charged on the company under section 269DA, or at step 5 in section 371BC(1) of TIOPA 2010, for the chargeable accounting period, the officer may make an assessment to tax in the amount which in the officer's opinion ought to be charged.

(4) The power in subsection (3) is without prejudice to the power to make a discovery assessment under paragraph 41(1) of Schedule 18 to FA 1998.

(5) If an assessment under subsection (3) is made because a company fails, or is unable, to amend its company tax return in accordance with subsection (2) in consequence of the amount of group surcharge allowance allocated to it for an accounting period being altered, the assessment is not out of time if it is made within 12 months of the date on which the alteration took place.

Application of Corporation Tax Acts: administration, double taxation etc

269DL Application of enactments applying to corporation tax: assessment, recovery, double taxation etc

(1) The provision in section 269DA relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.

(2) But this is subject to—

(a) the provisions of the Taxes Acts,

(b) any necessary modifications, and

Status: *Point in time view as at 15/09/2016.*
Changes to legislation: *There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 7A. (See end of Document for details)*

(c) subsection (5).

(3) The enactments mentioned in subsection (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) Accordingly, TMA 1970 is to have effect as if any reference to corporation tax included a sum chargeable under section 269DA as if it were an amount of corporation tax (but this does not limit subsections (1) to (3)).

(5) In the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999/358) or any further regulations made under section 32 of FA 1998 (unrelieved surplus advance corporation tax)—

(a) references to corporation tax do not include a sum chargeable on a banking company under section 269DA as if it were an amount of corporation tax, and

(b) references to profits charged to corporation tax do not include surcharge profits.

(6) Part 2 of TIOPA 2010 (double taxation relief) applies to a sum chargeable under section 269DA as if it were an amount of corporation tax, subject to subsections (7) to (9).

In those subsections, "credit for foreign tax" means a credit allowable under that Part.

(7) A non-banking or pre-2016 carried-forward credit for foreign tax is not to be allowed against a sum chargeable on a company under section 269DA, for a chargeable accounting period, as if it were an amount of corporation tax.

(8) "A non-banking or pre-2016 carried-forward credit for foreign tax" is a credit for foreign tax in respect of an amount—

(a) which was an amount of a credit for foreign tax that would (ignoring section 42 of TIOPA 2010) have been allowable against corporation tax of the kind mentioned in section 72(1)(a) of that Act in an accounting period of the company—

(i) in relation to which the company was not a banking company, or

(ii) ending before 1 January 2016, and

(b) which is treated under paragraph (a) of section 73(1) of that Act as if it were foreign tax of the kind mentioned in that paragraph in relation to the chargeable accounting period.

(9) Any credit for foreign tax that is allowable against—

(a) corporation tax for an accounting period, and

(b) a sum chargeable for that period under section 269DA as if it were an amount of corporation tax,

is to be allowed against the corporation tax first, before any of the credit then remaining is allowed against the sum so chargeable.

(10) In this section "the Taxes Acts" has the same meaning as in TMA 1970 (see section 118(1) of that Act).

269DM Payments in respect of the surcharge: information to be provided

(1) This section applies if—

(a) a sum is chargeable on a company ("the chargeable company") under section 269DA, for a chargeable accounting period, as if it were an amount of corporation tax, and

(b) a payment is made (whether or not by the chargeable company) that is wholly or partly in respect of that sum.

(2) The responsible company must notify an officer of Revenue and Customs in writing, on or before the date the payment is made, of the amount of the payment that is in respect of the sum that is chargeable under section 269DA.

(3) "The responsible company" is—

(a) if the chargeable company is party to relevant group payment arrangements, the company that is, under those arrangements, to discharge the liability of the chargeable company to pay corporation tax for the chargeable accounting period, and

(b) otherwise, the chargeable company.

(4) "Relevant group payment arrangements" means arrangements under section 59F(1) of TMA 1970 (arrangements for paying of tax on behalf of group members) that relate to the chargeable accounting period.

(5) The requirement in subsection (2) is to be treated, for the purposes of Part 7 of Schedule 36 to FA 2008 (information and inspection powers: penalties), as a requirement in an information notice.

(6) This section is subject to any provision to the contrary in regulations under section 59E of TMA 1970 (further provision as to when corporation tax is due and payable).

Anti-avoidance

269DN Profit and loss shifting to avoid or reduce surcharge liability

(1) Subsection (3) applies in relation to a banking company if—

(a) there are arrangements that result in a relevant transfer, and

(b) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on the banking company under section 269DA.

(2) There is a "relevant transfer" if there is, in substance—

(a) a transfer (directly or indirectly) of all or a significant part of the surcharge profits of the banking company, for a chargeable accounting period, to a non-banking company, or

(b) a transfer (directly or indirectly) of a loss or deductible amount to the banking company, for a chargeable accounting period, from a non-banking company, resulting in the elimination or significant reduction of the banking company's surcharge profits for that period.

(3) For the purposes of section 269DA, the surcharge profits of the banking company, for the chargeable accounting period, are to be taken to be what they would have been had the relevant transfer not taken place.

(4) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"CFC" and "chargeable company" have the same meaning as in Part 9A of TIOPA 2010 (controlled foreign companies) (see section 371VA of that Act);

"deductible amount" means—

(a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),

(b) an expense of a UK property business or overseas property business,

(c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,

(d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and relationships treated as such) (see section 301(2) of that Act), or

(e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act);

"non-banking company" means a company that, at any time when the arrangements mentioned in subsection (1) have effect, is neither—

(a) a banking company, nor

(b) a CFC in relation to which a banking company is a chargeable company.

Interpretation

269DO Interpretation

(1) In this Chapter—

"the appropriate person" has the meaning given by 269DF(9);

"banking company", subject to subsections (2) to (7), has the meaning given by section 269B;

"chargeable accounting period" has the meaning given by section 269DA(1);

"company tax return" has the same meaning as in Schedule 18 to FA 1998;

"group" has the meaning given by section 269BD;

"group allowance allocation statement" means a group allowance allocation statement submitted under section 269DG or 269DH;

"group allowance nomination" has the meaning given by section 269DF(1);

"group surcharge allowance" has the meaning given by section 269DF;

"HMRC" means Her Majesty's Revenue and Customs;

"nominated company" has the meaning given by section 269DF(1);

"surcharge allowance" has the meaning given by section 269DA(3) and (4);

"surcharge profits" has the meaning given by section 269DA(2).

(2) Subsections (3) to (7) apply for the purposes of determining whether a company is a banking company for the purposes of this Chapter.

(3) Condition D in section 269B(5) is not met by reason of the relevant entity accepting deposits in a period if—

(a) the liabilities shown in the relevant entity's balance sheet for that period, so far as they result from it accepting deposits, do not amount to a substantial proportion of the entity's total liabilities and equity shown in that balance sheet, and

(b) if the company is a member of a group at any time in that period, no other company is a member of the group, and a UK deposit-taker, at any time in the period.

(4) In subsection (3)(b) "UK deposit-taker" means—

(a) a UK resident company that accepts deposits, or

(b) a non-UK resident company that accepts deposits in the course of carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(5) For the purposes of section 269BA(1)(e) (exclusion of entities carrying on only asset management activities), an entity does not carry on a relevant regulated activity other than asset management activities by accepting deposits if—

(a) accepting deposits is ancillary to asset management activities the entity carries on, and

(b) the entity would not accept deposits but for the fact that it carries on asset management activities.

[F14(5A) For the purposes of section 269BA(1A) (extension of certain exclusions under subsection (1) of that section) a line of business carried on by a company is not regarded as involving the relevant regulated activity described in the provision mentioned in section 269BB(a) if—

(a) the carrying on of that activity is ancillary to asset management activities the company carries on, and

(b) the company would not carry that activity on but for the fact that it carries on asset management activities.**]**

(6) In **[**F15subsections (5) and (5A)**]** "asset management activities" has the meaning given by section 269BC(2).

(7) For the purposes of subsections (3) to (5) references to accepting deposits are to carrying on activity which is (or, if it were carried on in the United Kingdom, would be) a regulated activity for the purposes of FISMA 2000 by virtue of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (accepting deposits).**]**

Textual Amendments

F14 S. 269DO(5A) inserted (15.9.2016) by Finance Act 2016 (c. 24), **s. 56(9)(a)**

F15 Words in s. 269DO(6) substituted (15.9.2016) by Finance Act 2016 (c. 24), **s. 56(9)(b)**

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