



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

An Act to restate, with minor changes, certain enactments relating to tax; to make provision for purposes connected with the restatement of enactments by other tax law rewrite Acts; and for connected purposes. [18th March 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 Act applied (with modifications) (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 1, [Sch. 6 Pt. 1](#) (with reg. 27(a))

## PART 1

### OVERVIEW

#### 1 Overview of Act

- (1) The following Parts contain provisions relating to international aspects of taxation—
  - (a) Parts 2 and 3 (double taxation relief),
  - (b) Parts 4 and 5 (transfer pricing and advance pricing agreements),
  - (c) Part 6 (tax arbitrage),
  - (d) Part 7 (tax treatment of financing costs and income), and
  - (e) Part 8 (offshore funds).
- (2) Part 9 contains amendments of tax legislation to relocate enactments to appropriate places.

*Status: Point in time view as at 31/12/2012.*

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- (3) In particular, Part 9 contains amendments of TCGA 1992, ITTOIA 2005 and ITA 2007 that insert provisions relating to—
- (a) oil activities (see section 364 and Schedule 1),
  - (b) alternative finance arrangements (see section 365 and Schedule 2),
  - (c) leasing arrangements involving finance leases or loans (see section 367 and Schedule 3),
  - (d) sale and lease-back etc (see section 368 and Schedule 4),
  - (e) factoring of income etc (see section 369 and Schedule 5), and
  - (f) UK representatives of non-UK residents (see section 370 and Schedule 6).
- (4) Part 10 contains provisions of general application (including definitions for the purposes of the Act).
- (5) For abbreviations used in this Act see section 373, and for defined expressions used in Parts 2 to 8 see Schedule 11.

## PART 2

### DOUBLE TAXATION RELIEF

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

- C2** Pt. 2 modified by 1988 c. 1, Sch. 19ABA paras. 26-28 (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 8 para. 34\(3\)](#) (with [Sch. 9 paras. 1-9, 22](#)))

## CHAPTER 1

### DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

#### *Double taxation arrangements*

## 2 Giving effect to arrangements made in relation to other territories

- (1) If Her Majesty by Order in Council declares—
- (a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and
  - (b) that it is expedient that those arrangements should have effect,
- those arrangements have effect.

[<sup>F1</sup>(1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.]

- (2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.
- (3) The taxes are—

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- (a) income tax,
  - (b) corporation tax,
  - (c) capital gains tax,
  - (d) petroleum revenue tax, and
  - (e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).
- (4) In this Part “double taxation arrangements” means arrangements that have effect under subsection (1).

#### Textual Amendments

- F1** S. 2(1A) inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), s. 32(1)(4)

### 3 Arrangements may include retrospective or supplementary provision

- (1) Section 2(1) gives effect to arrangements even if the arrangements include—
- (a) provision for relief from tax for periods before the passing of this Act, or
  - (b) provision for relief from tax for periods before the making of the arrangements.
- (2) Section 2(1) gives effect to arrangements even if the arrangements include—
- (a) provision as to income that is not subject to double taxation,
  - (b) provision as to chargeable gains that are not subject to double taxation, <sup>F2</sup> ...
  - (c) provision as to foreign-field consideration that is not subject to double taxation <sup>F3</sup> or
  - (d) provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.]
- (3) In subsection (2)(c) “foreign-field consideration” means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

#### Textual Amendments

- F2** Word in s. 3(2)(b) omitted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), s. 32(2)(a)(4)
- F3** S. 3(2)(d) and word inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), s. 32(2)(b)(4)

### 4 Meaning of “double taxation” in sections 2 and 3

- (1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.
- (2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

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- (a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and
  - (b) about which provision is made in double taxation arrangements.
- (3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

## **5 Orders under section 2: contents and procedure**

- (1) If an Order under section 2 (“the later Order”) revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.
- (2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

## **6 The effect given by section 2 to double taxation arrangements**

- (1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.
- (2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—
- (a) for relief from income tax or corporation tax,
  - (b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,
  - (c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,
  - (d) for determining the income or chargeable gains to be attributed to non-UK resident persons,
  - (e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons,
  - (f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, or
  - (g) for conferring on non-UK resident persons the right to a tax credit under section 397(1) of ITTOIA 2005 in respect of qualifying distributions made to them by UK resident companies.
- (3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—
- (a) for relief from capital gains tax,
  - (b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,
  - (c) for determining the capital gains to be attributed to non-UK resident persons,
  - (d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or
  - (e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.



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- (4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).
- (5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).
- (6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.
- (7) In subsection (3) “UK resident person” and “non-UK resident person” have the meaning given by section 989 of ITA 2007.
- (8) In subsection (5) “special withholding tax” has the same meaning as in Part 3 (see section 136).

## 7 General regulations

- (1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.
- (2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.
- (3) Subsection (4) applies to tax if—
  - (a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and
  - (b) it is discovered that the arrangements did not apply to that payment.
- (4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—
  - (a) by assessment on the person entitled to the payment from which the tax is not deducted, or
  - (b) by deduction from subsequent payments.
- (5) In subsection (1) “the treaty sections” means—
  - sections 2 to 6,
  - section 134(1), and
  - section 134(3) to (6) so far as relating to section 134(1).
- (6) This section does not apply in relation to—
  - (a) petroleum revenue tax, or
  - (b) taxes imposed by the law of a territory outside the United Kingdom that—
    - (i) are of a similar character to petroleum revenue tax, and
    - (ii) are not of a similar character to income tax, corporation tax or capital gains tax.

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### *Unilateral relief arrangements*

#### **8 Interpretation: “unilateral relief arrangements” means rules 1 to 9, etc**

- (1) In this Part “unilateral relief arrangements”, in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.
- (2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—
  - (a) taxes which are charged on income and which correspond to income tax,
  - (b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and
  - (c) taxes which are charged on capital gains and which correspond to capital gains tax.
- (3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—
  - (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

#### **9 Rule 1: the unilateral entitlement to credit for non-UK tax**

- (1) Credit for tax—
  - (a) paid under the law of the territory,
  - (b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and
  - (c) corresponding to UK tax,
 is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.
- (2) Credit for tax—
  - (a) paid under the law of the territory,
  - (b) calculated by reference to any capital gain accruing in the territory, and
  - (c) corresponding to UK tax,
 is to be allowed against any capital gains tax calculated by reference to that gain.
- (3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.
- (4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—
  - (a) it is charged on income and corresponds to income tax, or
  - (b) it is charged on income or chargeable gains and corresponds to corporation tax.
- (5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.
- (6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—
  - (a) is payable under the law of a province, state or other part of a country, or

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(b) is levied by or on behalf of a municipality or other local body.

(7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of “in the territory”.

(8) Subsections (1) and (2) are subject to sections 11 and 12.

## 10 Rule 2: accrued income profits

(1) Subsection (2) applies if—

- (a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,
- (b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and
- (c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.

(2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.

(3) The amount of the credit allowed under subsection (2) is given by—

$$\text{AIP} \times \text{FTR}$$

where—

AIP is the amount of the accrued income profits, and

FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

(4) Subsection (2) is subject to section 11.

(5) In subsection (1)(b) “the relevant tax year” means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.

## 11 Rule 3: interaction between double taxation arrangements and rules 1 and 2

(1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.

(2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.

(3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

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## **12 Rule 4: cases in which, and calculation of, credit allowed for tax on dividends**

- (1) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.
- (2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P’s profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.
- (3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—
  - (a) directly or indirectly controlled, or
  - (b) were a subsidiary of a company that directly or indirectly controlled, at least 10% of the voting power in P.
- (4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

## **13 Rule 5: credit for tax charged directly on dividend**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if—
  - (a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and
  - (b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.

## **14 Rule 6: credit for underlying tax on dividend paid to 10% associate of payer**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if conditions A and B are met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, at least 10% of the voting power in P.
- (5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

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## **15 Rule 7: credit for underlying tax on dividend paid to sub-10% associate**

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—
  - (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.
- (6) Condition C is that—
  - (a) the held percentage has been reduced below 10%,
  - (b) the recipient shows that the reduction below the 10% limit (and any further reduction)—
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and
    - (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
  - (a) the company is neither the recipient nor a parent,
  - (b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and
  - (c) the company is relevant for determining whether, before the reduction, the recipient—
    - (i) indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in P.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
  - (a) the voting power in P as a result of which relief was due under section 14 before the reduction, or

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- (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

## 16 Rule 8: credit for underlying tax on dividend paid by exchanged associate

- (1) This section applies for the purposes of section 12(1).
- (2) Credit under section 9 for overseas tax on a dividend paid by a company (“P”) resident in the territory is allowed if each of conditions A to C is met.
- (3) Condition A is that—
  - (a) the recipient of the dividend is a company resident in the United Kingdom, or
  - (b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.
- (4) Condition B is that the recipient—
  - (a) directly or indirectly controls, or
  - (b) is a subsidiary of a company which directly or indirectly controls, less than 10% of the voting power in P.
- (5) If condition B is met, in subsection (6) “the held percentage” means the voting power in P which is directly or indirectly controlled by—
  - (a) the recipient, or
  - (b) a company of which the recipient is a subsidiary.
- (6) Condition C is that—
  - (a) the held percentage has been acquired in exchange for voting power in another company (“X”),
  - (b) before the exchange, the recipient—
    - (i) directly or indirectly controlled, or
    - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X,
  - (c) the recipient shows that the exchange (and any reduction after the exchange) —
    - (i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and
    - (ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and
  - (d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.
- (7) For the purposes of subsection (6) a company is an “associate” if—
  - (a) the company is neither the recipient nor a parent,
  - (b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and

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- (c) the company is relevant for determining whether, before the exchange, the recipient—
  - (i) indirectly controlled, or
  - (ii) was a subsidiary of a company which directly or indirectly controlled, at least 10% of the voting power in X.
- (8) In subsections (6) and (7) “parent” means a company of which the recipient is a subsidiary.
- (9) In subsection (6) “the relevant voting power” means—
  - (a) the voting power in X as a result of which relief was due under section 14 before the exchange, or
  - (b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.
- (10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

## **17 Rule 9: credit in relation to dividends for spared tax**

- (1) Subsection (2) applies if—
  - (a) under the law of the territory, an amount of tax (“the spared tax”) would, but for a relief, have been payable by a company resident in the territory (“company A”) in respect of any of its profits,
  - (b) company A pays a dividend out of those profits to another company resident in the territory (“company B”),
  - (c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom (“company C”), and
  - (d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.
- (2) The spared tax is to be taken into account—
  - (a) for the purposes of sections 9 to 16, and
  - (b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C,as if it had been payable and paid.
- (3) References in these rules and that Chapter—
  - (a) to tax payable or chargeable, or
  - (b) to tax not chargeable directly or by deduction,are to be read in accordance with subsection (2).
- (4) Except as provided by subsection (2), in relation to any dividend paid—
  - (a) by a company resident in the territory,
  - (b) to a company resident in the United Kingdom,

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credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.

- (5) Subsection (4) has effect despite any double taxation arrangements—
- (a) made in relation to the territory, or
  - (b) made in relation to any other territory outside the United Kingdom,
- which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.
- (6) In this section “these rules” means sections 9 to 16 and this section.

## CHAPTER 2

### DOUBLE TAXATION RELIEF BY WAY OF CREDIT

*Effect to be given to credit for foreign tax allowed against UK tax*

#### **18 Entitlement to credit for foreign tax reduces UK tax by amount of the credit**

- (1) Subsection (2) applies if—
- (a) under double taxation arrangements, or
  - (b) under unilateral relief arrangements for a territory outside the United Kingdom,
- credit is to be allowed against any income tax, corporation tax or capital gains tax chargeable in respect of any income or chargeable gain.
- (2) The amount of those taxes chargeable in respect of the income or gain is to be reduced by the amount of the credit.
- (3) In subsection (1) “credit”—
- (a) in relation to double taxation arrangements, means credit for tax payable under the law of the territory in relation to which the arrangements are made, and
  - (b) in relation to unilateral relief arrangements for a territory outside the United Kingdom, means credit for tax payable under the law of that territory,
- but see sections 12(3) and 63(5) (dividends: certain tax payable otherwise than under the law of a territory treated as payable under that law).
- [<sup>F4</sup>(3A) References in subsection (3) to tax payable under the law of a territory outside the United Kingdom do not include tax paid by a company in relation to which an election under section 18A of CTA 2009 (exemption for profits or losses of overseas permanent establishments) has effect in respect of a relevant profits amount or relevant losses amount within the meaning of that section.]
- (4) Subsection (2) applies subject to—
- (a) the following provisions of this Chapter,
  - (b) section 106 (Chapter 1 and this Chapter operate for capital gains tax purposes separately from their operation for the purposes of other United Kingdom taxes), and



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- (c) Chapter 2 of Part 18 of ICTA (double taxation relief: pooling of foreign dividends paid before 1 July 2009).
- (5) Credit is allowed under subsection (2) against any tax only if, under the arrangements concerned, credit is allowable against that tax.
- (6) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.

#### Textual Amendments

**F4** S. 18(3A) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 26, 31](#)

### 19 Time limits for claims for relief under section 18(2)

- (1) Subsections (2) and (3) apply to a claim for relief under section 18(2).
- (2) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to income tax or capital gains tax for a tax year, the claim must be made on or before—
  - (a) the fourth anniversary of the end of that tax year, or
  - (b) if later, the 31 January following the tax year in which the foreign tax is paid.
- (3) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to corporation tax for an accounting period, the claim must be made not more than—
  - (a) four years after the end of that accounting period, or
  - (b) if later, one year after the end of the accounting period in which the foreign tax is paid.

### 20 Foreign tax includes tax spared because of international development relief

- (1) Subsections (2) and (4) apply if the arrangements are double taxation arrangements.
- (2) For the purposes of this Chapter, any amount within subsection (3) is to be treated as having been payable.
- (3) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—
  - (a) given under the law of that territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and
  - (b) about which provision is made in double taxation arrangements.
- (4) References in this Chapter—
  - (a) to tax payable or chargeable, or
  - (b) to tax not chargeable directly or by deduction,
 are to be read in accordance with subsection (2).
- (5) Subsections (2) and (4) have effect subject to—
  - (a) subsection (6), and

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- (b) sections 31(4) and 32(5) (income and gains not to be increased in calculations under section 31 or 32 by amounts treated by this section as having been payable).
- (6) If section 63(5) applies because conditions A and B in section 63 are met, relief is not given in accordance with section 63(5) (relief for certain tax underlying dividends paid between related companies) because of this section unless double taxation arrangements make express provision for the relief.
- (7) Subsection (6) does not affect the operation of section 17(2) (treatment, for purposes of unilateral relief, of dividend paid by foreign company that has received dividends from a company benefiting from tax-sparing relief).

### *Interpretation of Chapter*

## **21 Meaning of “the arrangements”, “the non-UK territory”, “foreign tax” etc**

- (1) In this Chapter (except section 18)—
  - “the arrangements” means the arrangements mentioned in section 18(1),
  - “the non-UK territory” means the territory mentioned in section 18(3),
  - “foreign tax” means tax chargeable under the law of the non-UK territory—
    - (a) for which credit may be allowed under the arrangements, and
    - (b) which is not special withholding tax, and
  - “underlying tax” means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction.
- (2) In subsection (1) “special withholding tax” has the same meaning as in Part 3 (see section 136).
- (3) The definitions in subsection (1) are to be read with sections 17(3) and 20(4) (meaning of references to tax payable or chargeable, and of references to tax not chargeable directly or by deduction).
- (4) See also section 8(2) (meaning of references to tax payable or paid under the law of a territory outside the United Kingdom).

*Credits where same income charged to income tax in more than one tax year*

## **22 Credit for foreign tax on overlap profit if credit for that tax already allowed**

- (1) Subsection (2) applies in relation to foreign tax (“FT”) paid in respect of any income if—
  - (a) the income is overlap profit, and
  - (b) credit for FT would have been allowed under section 18(2) against income tax chargeable for a tax year (“year L”) in respect of the income but for the fact that credit for FT had been allowed against income tax chargeable in respect of the income for a previous tax year.
- (2) Credit for FT is allowed against income tax chargeable for year L in respect of the income.

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- (3) The amount of credit allowed for year L under subsection (2) in respect of the income must not exceed the difference between—
- T, and
  - the amount of credit which was in fact allowed, under subsection (2) or section 18(2), in respect of the income for any earlier tax year or years.
- (4) For the purposes of subsection (3)(a), T is the amount (“A”) of the foreign tax charged on the income, but this is subject to subsections (5) to (7).
- (5) If Y exceeds FP—

$$T = \frac{Y}{FP} \times A$$

where—

Y is the number of tax years for which credit is allowed, under subsection (2) or section 18(2), against income tax in respect of the income, and  
FP is the number of foreign periods of assessment.

- (6) For the purposes of subsection (5), a tax year or foreign period of assessment for which part only of the income is charged to tax is counted not as one year or period but as a fraction of a year or period, the fraction being—

$$\frac{P}{W}$$

where—

P is that part of the income, and  
W is the whole of the income.

- (7) If the same income is charged to different foreign taxes for different foreign periods of assessment—
- subsection (5) (read with subsection (6)) is to be applied separately to each of those taxes, and
  - T is the sum of those taxes after subsection (5) has been applied to them in accordance with paragraph (a).
- (8) In this section—

“overlap profit” has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see section 204 of that Act), and

“foreign period of assessment”, in relation to any income, means a period for which the income is, under the law of the non-UK territory, charged to the foreign tax concerned.

## **23 Time limits for claims for relief under section 22(2)**

- Relief under section 22(2) requires a claim.
- Any claim for relief by way of credit under section 22(2) against income tax for any tax year must be made on or before the fifth anniversary of the 31 January following that tax year, subject to subsection (3).

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- (3) If there is more than one tax year in respect of which such relief may be given, any claim for the relief must be made on or before the fifth anniversary of the 31 January following the later of those tax years.

## **24 Claw-back of relief under section 22(2)**

- (1) Subsections (4) and (5) apply if—
- (a) credit against income tax for any tax year is allowed under section 22(2) in respect of any income (“the original income”), and
  - (b) the original income, or any part of it, contributes to an amount which, under section 205 or 220 of ITTOIA 2005, is deducted in calculating profits of a later tax year (“the later year”).
- (2) For the purposes of subsections (4) and (5), amount A is the difference between—
- (a) the amount of the credit which, as a result of the application of sections 18(2) and 22(2) and subsection (5) of this section, has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (1), and
  - (b) the amount of the credit which, ignoring sections 22 and 23 and this section, would have been allowed under section 18(2) against income tax in respect of so much of the original income as contributes as mentioned in subsection (1).
- (3) For the purposes of subsections (4) and (5), amount B is the amount of credit which, on the assumption that no amount were deducted under section 205 or 220 of ITTOIA 2005, would be allowable under section 18(2) against income tax in respect of income arising in the later year from the same source as the original income.
- (4) If amount A exceeds amount B—
- (a) no credit is allowed for income arising from that source in the later year,
  - (b) an amount of income tax equal to the excess is charged for the later year, and
  - (c) the liable person is liable for the tax.
- (5) If amount B exceeds amount A, the liable person is allowed for the later year an amount of credit equal to the excess.
- (6) In subsections (4) and (5) “the liable person” means the person liable for income tax charged on the income (if any) arising in the later year from the same source as the original income.
- (7) For the purposes of subsections (1) to (6), it is to be assumed that, where an amount is deducted under section 220 of ITTOIA 2005, each of the overlap profits added together at Step 1 of the calculation in subsection (3) of that section contributes to that amount in the proportion which that overlap profit bears to the total that is the result of that Step.
- (8) In this section—
- (a) “overlap profit” has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see section 204 of that Act), and
  - (b) references to income arising in any year include income received in the year that is income on which income tax is to be calculated by reference to the amount of income received in the United Kingdom.

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### *Cases in which credit not allowed*

#### **25 Credit not allowed if relief allowed against overseas tax**

- (1) Subsection (2) applies if relief may be allowed—
  - (a) under the arrangements, or
  - (b) under the law of the non-UK territory in consequence of the arrangements, in respect of an amount of tax that would, but for the relief, be payable under the law of that territory.
- (2) Credit under section 18(2) is not allowed in respect of that tax, whether or not the relief has been used.

#### **26 Credit not allowed under arrangements unless taxpayer is UK resident**

- (1) Credit under section 18(2) against income tax, corporation tax or capital gains tax for a chargeable period is not allowed unless the person in respect of whose income or chargeable gains the tax is chargeable is UK resident for that period.
- (2) Sections 28 to 30 (credit under unilateral relief arrangements allowed to some non-UK resident persons) contain exceptions to subsection (1).
- (3) In subsection (1) so far as it relates to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).
- (4) In subsection (1) so far as it relates to capital gains tax “UK resident” has the meaning given by section 989 of ITA 2007.

#### **27 Credit not allowed if person elects against credit**

Credit under section 18(2) against income tax, corporation tax or capital gains tax charged on any income or chargeable gains of a person is not allowed if the person elects for credit not to be allowed in respect of that income or those gains.

### *Exceptions to requirement to be UK resident*

#### **28 Unilateral relief for Isle of Man or Channel Islands tax**

- (1) Subsection (2) applies if the arrangements—
  - (a) are unilateral relief arrangements for a territory outside the United Kingdom, and
  - (b) provide for credit to be allowed for tax paid under the law of the Isle of Man (“the Isle of Man tax”).
- (2) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Isle of Man tax if the person in respect of whose income or chargeable gains the UK tax is payable is—
  - (a) resident for that period in the United Kingdom, or
  - (b) resident for that period in the Isle of Man.
- (3) Subsection (4) applies if the arrangements—

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- (a) are unilateral relief arrangements for a territory outside the United Kingdom, and
  - (b) provide for credit to be allowed for tax paid under the law of any of the Channel Islands (“the Channel Islands tax”).
- (4) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Channel Islands tax if the person in respect of whose income or chargeable gains the UK tax is payable is—
- (a) resident for that period in the United Kingdom, or
  - (b) resident for that period in any of the Channel Islands.
- (5) Each of the following is a UK tax for the purposes of this section—
- (a) income tax,
  - (b) corporation tax, and
  - (c) capital gains tax.
- (6) In subsections (2) and (4) so far as they relate to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).

## **29 Unilateral relief for tax on income from employment or office**

- (1) Subsection (3) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.
- (2) In subsection (3) “overseas tax” means tax—
- (a) paid under the law of the territory,
  - (b) charged on income and corresponding to income tax or to corporation tax, and
  - (c) calculated by reference to income from an office or employment the duties of which are performed wholly or mainly in the territory.
- (3) Credit for overseas tax may be allowed under section 18(2) against income tax for a tax year—
- (a) calculated by reference to that income, and
  - (b) charged on employment income,
- if the person performing the duties is resident in the United Kingdom, or resident in the territory, for that year.
- (4) For the purposes of subsection (2)(b) tax may correspond to income tax or corporation tax even though it—
- (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

## **30 Unilateral relief for non-UK tax on non-resident's UK branch or agency etc**

- (1) Subsection (2) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.
- (2) Credit for tax within subsection (3) or (4) may be allowed under section 18(2) against any of the UK taxes if the territory is not one in which the person or company concerned is liable to tax by reason of domicile, residence or place of management.

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- (3) Tax is within this subsection if the arrangements provide for credit for it to be allowed against income tax or corporation tax, and it is paid under the law of the territory in respect of the income or chargeable gains—
- (a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or
  - (b) of a permanent establishment in the United Kingdom of a non-UK resident company.
- (4) Tax is within this subsection if the arrangements provide for credit for it to be allowed against capital gains tax, and it is paid under the law of the territory in respect of the capital gains—
- (a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or
  - (b) of a permanent establishment in the United Kingdom of a non-UK resident company.
- (5) Relief under subsection (2) may not exceed the relief which would have been available if—
- (a) the branch or agency, or permanent establishment, had been a UK resident person, and
  - (b) the income or gains had been income or gains of that person.
- (6) Each of the following is a UK tax for the purposes of subsection (2)—
- (a) income tax,
  - (b) corporation tax, and
  - (c) capital gains tax.
- (7) In this section so far as it relates to capital gains tax—
- “branch or agency” has the meaning given by section 10(6) of TCGA 1992,
- “company” has the same meaning as in TCGA 1992 (see section 288 of that Act),
- “permanent establishment”, in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010, and
- “UK resident” or “non-UK resident”, in relation to a company or other person, has the meaning given by section 989 of ITA 2007.

*Calculating income or gains in respect of which credit is allowed*

**31 Calculation of income or gain where remittance basis does not apply**

- (1) Subsection (2) applies if—
- (a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or gain, and
  - (b) section 32(2) (cases where UK tax payable by reference to amount received in UK) does not apply.
- (2) In calculating the amount of the income or gain for the purposes of income tax, corporation tax or capital gains tax—
- (a) no deduction is to be made for foreign tax or special withholding tax, whether in respect of the same or any other income or gain, and

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- (b) if the credit is for foreign tax in respect of a dividend, the amount of the dividend is to be treated as increased by any underlying tax within subsection (3).
- (3) In relation to a dividend, underlying tax is within this subsection if—
  - (a) under the arrangements it is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend,
  - (b) because the amount given by Step 2 of the calculation under section 58 is more than the amount given by Step 3 of that calculation, it is not to be taken into account in considering the questions mentioned in paragraph (a), or
  - (c) under section 60(3) it is not to be taken into account in considering those questions.
- (4) The amount of any income or gain is not to be increased under subsection (2)(b) by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.
- (5) Subsections (1) to (4) have effect for the purposes of corporation tax despite—
  - (a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and
  - (b) section 906(1) of CTA 2009 (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).
- (6) In this section “special withholding tax” means special withholding tax—
  - (a) within the meaning of Part 3 (see section 136), and
  - (b) in respect of which a claim has been made under that Part.

## **32 Calculation of amount received where UK tax charged on remittance basis**

- (1) Subsection (2) applies if—
  - (a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or capital gain, and
  - (b) income tax or capital gains tax is payable by reference to the amount received in the United Kingdom.
- (2) For the purposes of whichever of income tax and capital gains tax is payable as mentioned in subsection (1)(b), the amount received is to be treated as increased—
  - (a) by the amount of the foreign tax in respect of the income or gain,
  - (b) by the amount of any special withholding tax levied in respect of the income or gain, but see subsection (4), and
  - (c) if the credit is for foreign tax in respect of a dividend, by any underlying tax that under the arrangements is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend.
- (3) For the purposes of subsection (4), a gain is a “special gain” if—
  - (a) it is a chargeable gain that accrues to a person on a disposal by the person of assets,
  - (b) the consideration for the disposal consists of or includes an amount of savings income, and
  - (c) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.



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- (4) If the credit is for foreign tax in respect of a gain that is a special gain, the amount of the increase under subsection (2)(b) is given by—

$$\text{AWT} \times \frac{\text{GUK}}{\text{SG} - \text{AWT}}$$

where—

AWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal concerned,

GUK is the amount of the gain received in the United Kingdom, and

SG is the amount of the gain.

- (5) The amount of any income or gain is not to be increased under this section by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.
- (6) In this section—
- “savings income” has the same meaning as in Part 3 (see section 136), and
  - “special withholding tax” means special withholding tax—
    - (a) within the meaning of Part 3 (see section 136), and
    - (b) in respect of which a claim has been made under that Part.

#### *Limits on credit: general rules*

### **33 Limit on credit: minimisation of the foreign tax**

- (1) The credit under section 18(2) must not exceed the credit which would be allowed had all reasonable steps been taken—
- (a) under the law of the non-UK territory, and
  - (b) under double taxation arrangements made in relation to that territory,
- to minimise the amount of tax payable in that territory.
- (2) The steps mentioned in subsection (1) include—
- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
  - (b) making elections for tax purposes.
- (3) For the purposes of subsection (1), any question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part.

### **34 Reduction in credit: payment by reference to foreign tax**

- (1) Subsection (2) applies if—
- (a) credit for foreign tax is to be allowed to a person (“P”) under the arrangements, and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.
- (2) The amount of that credit is to be reduced by an amount equal to that payment.

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- (3) Whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

### 35 Disallowed credit: use as a deduction

- (1) Subsection (2) applies if the application of section 36(2) or 42(2) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.
- (2) The taxpayer's income is to be treated as reduced by the amount of the disallowed credit.
- (3) Subsection (4) applies if the application of section 40(2) prevents an amount of credit for foreign tax from being allowable against capital gains tax.
- (4) The taxpayer's chargeable gains are to be treated as reduced by the amount of the disallowed credit.
- (5) Subsection (2) or (4) applies only so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.
- (6) For the purposes of subsection (5), payment of the foreign tax is to be taken into account despite section 31(2).

*Limit on, and reduction of, credit against income tax*

### 36 Amount of limit

- (1) This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.
- (2) The amount of credit in respect of income from any particular source must not exceed the difference between—
- (a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$TI - X$

and

- (b) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$TI - (X + C)$

- (3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.
- (4) In subsection (2)—
- TI is the person's total income for the tax year,  
X is the income (if any) to which subsection (2) has already been applied, and  
C is the income in respect of which the credit is to be allowed.

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- (5) The rules for calculating an amount of income tax under subsection (2) are—
  - (a) the calculation is to be made in accordance with sections 31 and 32, and
  - (b) no credit is to be allowed for foreign tax, and
  - (c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but
  - (d) any other income tax reduction under the Income Tax Acts is to be made.
- (6) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.
- (7) For the purposes of subsection (3) the following are “tax-relief arrangements”—
  - (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

### **37 Credit against tax on trade income: further rules**

- (1) Apply section 36(2) in accordance with subsections (2) to (5) if the tax against which the credit is to be allowed is income tax on trade income.
- (2) Treat the reference to income from any particular source as a reference to trade income arising out of a transaction, arrangement or asset.
- (3) C is the income arising out of the transaction, arrangement or asset in connection with which the credit arises.
- (4) In calculating an amount of income tax under section 36(2) deduct, from the income arising out of the transaction, arrangement or asset in connection with which the credit arises, deductions which would be allowed in a calculation of the taxpayer's liability in respect of that income.
- (5) Treat section 36(3) as referring—
  - (a) to trade income instead of income, and
  - (b) to a transaction, arrangement or asset instead of a source.
- (6) In subsection (4) “deductions” includes a just and reasonable apportionment of deductions that relate—
  - (a) partly to the income arising out of the transaction, arrangement or asset in connection with which the credit arises, and
  - (b) partly to other matters.
- (7) In this section “trade income” means income chargeable to tax under—
  - (a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts), or
  - (b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts).

### **38 Credit against tax on royalties: further rules**

- (1) Subsection (2) applies if—
  - (a) the arrangements are double taxation arrangements, and

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- (b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.
- (2) For the purposes of section 36(2)—
  - (a) royalty income arising in more than one foreign jurisdiction in a tax year in respect of the asset is to be treated as a single item of income, and
  - (b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.
- (3) In this section “foreign jurisdiction” means a jurisdiction outside the United Kingdom.

### 39 Credit reduced by reference to accrued income losses

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person is entitled under section 18(2) to credit against income tax.
- (3) Condition B is that the income tax is calculated by reference to income consisting of interest in respect of which the person is entitled under section 679 of ITA 2007 (no income tax on interest so far as matched by accrued income losses) to an exemption from liability to income tax.
- (4) Condition C is that—
  - (a) the arrangements are unilateral relief arrangements for a territory outside the United Kingdom and the credit is allowed as a result of section 9, or
  - (b) the arrangements are double taxation arrangements and the credit is allowed as a result of the inclusion in the arrangements of any provision corresponding to that section.
- (5) The amount of the credit is to be reduced to the amount given by—

$$\frac{I - E}{I} \times C$$

where—

I is the amount of the interest,

E is the amount of the exemption, and

C is the amount the credit would be apart from this subsection.

- (6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning in this section as in that Chapter.

#### *Limit on credit against capital gains tax*

### 40 Amount of limit

- (1) This section is about the amount of credit allowed under section 18(2) against a person's capital gains tax for any tax year.
- (2) The amount of credit in respect of any particular capital gain must not exceed the difference between—
  - (a) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

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### TG – X

and

- (b) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

### TG – (X + C)

- (3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of more than one capital gain, apply subsection (2) successively to each capital gain, taking the gains in the order which will result in the greatest reduction in the person's capital gains tax liability for the tax year.
- (4) In subsection (2)—
- TG is the total amount of the chargeable gains accruing to the person in the tax year,
  - X is the total amount of the gains (if any) to which subsection (2) has already been applied, and
  - C is the amount of the gain in respect of which the credit is to be allowed.
- (5) The rules for calculating an amount of capital gains tax under subsection (2) are—
- (a) the calculation is to be made in accordance with sections 31 and 32, and
  - (b) no credit is to be allowed for foreign tax.
- (6) For the purposes of subsection (3) the following are “tax-relief arrangements”—
- (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

### *Limit on total credit against income tax and capital gains tax*

#### **41 Amount of limit**

- (1) In subsection (2) “the total credit” means—

### F + G

where—

F is the total credit, under all tax-relief arrangements, allowed under section 18(2) against a person's income tax for any tax year, and  
G is the total credit, under all tax-relief arrangements, allowed under section 18(2) against the person's capital gains tax for that tax year.

- (2) The total credit is not to be more than—

### I + C – A

where—

I is the total income tax payable by the person for the tax year,  
C is the total capital gains tax payable by the person for the tax year, and  
A is the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by the person in the tax year.

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- (3) In calculating I and C for the purposes of subsection (2), no reduction is to be made for credit under section 18(2).
- (4) Subsection (2) applies in addition to sections 36 and 40.
- (5) For the purposes of subsection (1) the following are “tax-relief arrangements”—
  - (a) double taxation arrangements, and
  - (b) unilateral relief arrangements for a territory outside the United Kingdom.

### *Limit on credit against corporation tax*

## **42 Amount of limit**

- (1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.
- (2) The credit must not exceed—

$$R \times IG$$

where—

R is the rate of corporation tax payable by the company, before any credit under this Part, on the company's income or chargeable gains for the accounting period in which the income arises or the gain accrues, and  
 IG is the amount of the income or gain (but see subsection (3)).

- (3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—
  - section 52(2) (general deductions),
  - section 53(2) (earlier years' deficits on loan relationships),
  - section 54(2) or (4) (debits on loan relationships),
  - section 55(5) (current year's deficits on loan relationships), or
  - section 56(2) (debits on intangible fixed assets).
- (4) Subsection (2) is to be read with—
  - section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),
  - sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), and
  - sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

## **[<sup>F5</sup>43 Profits attributable to permanent establishments for purposes of section 42(2)]**

- (1) This section applies in determining for the purposes of section 42(2) the amount of the profits of a UK resident company on which corporation tax is or would be chargeable that is attributable to a permanent establishment of the company in a territory outside the United Kingdom.

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- (2) The amount of the profits of the company that is attributable to the permanent establishment is the amount that the permanent establishment would have made if it were a distinct and separate enterprise which—
  - (a) engaged in the same or similar activities under the same or similar conditions, and
  - (b) dealt wholly independently with the company.
- (3) In applying subsection (2) assume that—
  - (a) the permanent establishment has the same credit rating as the company, and
  - (b) (subject to subsection (5)) the permanent establishment has such equity and loan capital as it could reasonably be expected to have if the equity and loan capital of the company were allocated in accordance with subsection (4).
- (4) The allocation is one made on a just and equitable basis between the permanent establishments in territories outside the United Kingdom through which the company carries on business and the entity that the company would consist of if each such permanent establishment were an entity distinct and separate from the company.
- (5) If the permanent establishment is in a full treaty territory (within the meaning of Chapter 3A of Part 2 of CTA 2009) subsection (3)(b) has effect subject to the double taxation arrangements having effect in relation to the territory.
- (6) Subsections (3)(b) to (5) prevail over any allotment of equity or loan capital to the permanent establishment made by the company.
- (7) If the company is an insurance company<sup>F6</sup> ..., in applying subsection (2) assume that the permanent establishment has such free assets as it would have in the circumstances described in that subsection.
- (8) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision as to the meaning of “free assets” in subsection (7).]

#### Textual Amendments

**F5** S. 43 substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 27, 31, 37](#)

**F6** Words in s. 43(7) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 233](#)

## 44 Credit against tax on trade income

- (1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.
- (2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.
- (3) In calculating the amount of corporation tax attributable to any income, take into account—
  - (a) deductions which would be allowed in calculating the company's liability, and
  - (b) expenses of a company connected with the company, so far as reasonably attributable to the income,
 but see section 49 (restriction if company is a bank or is connected with a bank).

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- (4) In subsection (3)(a) “deductions” includes a just and reasonable apportionment of deductions that relate—
- (a) partly to the transaction, arrangement or asset from which the income arises, and
  - (b) partly to other matters.
- (5) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (3)(b).
- (6) In this section “trade income” means—
- (a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),
  - (b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),
  - (c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and
  - (d) any other income or profits which by a provision of ICTA is or are—
    - (i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or
    - (ii) calculated in the same way as the profits of a trade,
 but does not include income to which section 99 of this Act (insurance companies) applies.
- (7) In subsection (6) the references—
- (a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and
  - (b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,
- do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

#### **45 Credit against tax on trade income: anti-avoidance rules**

- (1) If a company (“A”) carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person (“B”) a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).
- (2) Income of a person (“D”) is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—
  - (a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person (“C”),
  - (b) had C received the income, it would be reasonable to assume that it would be trade income of C, and
  - (c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.
- (3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.



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- (4) In subsection (3)—  
“relevant person” means—  
(a) D, or  
(b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and  
“relevant transaction” means any of the transactions giving rise to the income mentioned in subsection (2)(b).
- (5) In subsections (2) to (4) “connected person” means a person with whom D is connected.
- (6) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of subsection (5).
- (7) In this section “trade income” has the same meaning as in section 44.

#### **46 Applying section 44(2): asset in hedging relationship with derivative contract**

- (1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).
- (2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.
- (3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—  
(a) the asset is acquired as a hedge of risk in connection with the contract, or  
(b) the contract is entered into as a hedge of risk in connection with the asset.
- (4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that is conclusive for the purposes of subsection (3).

#### **47 Applying section 44(2): royalty income**

- (1) Subsection (2) applies if—  
(a) the arrangements are double taxation arrangements, and  
(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.
- (2) For the purposes of section 44(2)—  
(a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and  
(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.
- (3) In this section “foreign jurisdiction” means a jurisdiction outside the United Kingdom.

#### **48 Applying section 44(2): “portfolio” of transactions, arrangements or assets**

- (1) Subsection (5) applies if each of conditions A to C is met.

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- (2) Condition A is that transactions, arrangements or assets are treated by a taxpayer as a series or group (“the portfolio”).
- (3) Condition B is that credits for foreign tax arise in respect of the portfolio.
- (4) Condition C is that—
  - (a) it is not reasonably practicable to prepare a separate calculation of income for the purposes of section 44(2) in respect of each transaction, arrangement or asset, or
  - (b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.
- (5) The income arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 44(2) in a just and reasonable manner.

#### **49 Restricting section 44(3) if company is a bank or connected with a bank**

- (1) Section 44(3) is subject to subsection (2) of this section if—
  - (a) the company is a bank or is connected with a bank, and
  - (b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.
- (2) The amount of the notional funding costs is to be included in the amount to be taken into account under section 44(3), but only so far as it exceeds the amount of the included funding costs.
- (3) In this section—
  - “the company” means the company mentioned in section 44(3)(a),
  - “included funding costs” means the total of the funding costs that are—
    - (a) incurred by the company, or any company connected with the company, in respect of capital used to fund the relevant transaction, and
    - (b) included in the amount to be taken into account under section 44(3) before the application of subsection (2) of this section,
  - “notional funding costs” means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way,
  - “the relevant bank” means the bank that is the company, or with which the company is connected, and
  - “the relevant transaction” means the transaction, arrangement or asset from which the income mentioned in section 44(1) arises.
- (4) The following provisions apply for the purposes of this section—
  - section 1120 of CTA 2010 (meaning of “bank”), and
  - section 1122 of CTA 2010 (meaning of “connected”).

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### *Calculating tax for purposes of section 42(2)*

#### **50 Tax for period on loan relationships**

- (1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.
- (2) Assume that the charge to corporation tax on income, as applied by section 299 of CTA 2009, is charged on TNTC, not on the non-trading profits that the company has for the period in respect of its loan relationships.
- (3) For the purposes of subsection (1), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (4) In this section—
  - “non-trading credit” means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships), and
  - “TNTC” is the total amount of the company's non-trading credits for the period.

#### **51 Tax for period on intangible fixed assets**

- (1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.
- (2) Assume that the charge to corporation tax on income, as applied by section 752 of CTA 2009, is charged on TNTC, not on the non-trading gains arising to the company in the period on intangible fixed assets.
- (3) For the purposes of subsection (1), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (4) In this section—
  - “non-trading credit” means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and
  - “TNTC” is the total amount of the company's non-trading credits for the period.

### *Allocation of deductions etc to profits for purposes of section 42*

#### **52 General deductions**

- (1) Subsection (2) applies for the purposes of section 42 if in the accounting period there is any amount (“the deduction”) that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description.
- (2) The company may allocate the deduction in such amounts, and to such of its profits for the period, as it thinks fit.

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### 53 Earlier years' non-trading deficits on loan relationships

- (1) Subsection (2) applies for the purposes of section 42 if an amount (“the deficit”) is carried forward to the period under section 457(1) of CTA 2009 (non-trading deficits on loan relationships set against profits of subsequent years).
- (2) The deficit can be allocated only to the company's non-trading profits for the period, but the company may allocate the deficit to such of those profits, and in such amounts, as the company thinks fit.
- (3) In this section “non-trading profits” has the meaning given by section 457(5) of CTA 2009.

### 54 Non-trading debits on loan relationships

- (1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.
- (2) That much of the company's non-trading debits for the period as is given by the formula—

$$\text{TNTD} - (\text{CB} + \text{CF} + \text{GR})$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit, but this is subject to subsection (4).

- (3) Subsection (4) applies for the purposes of section 42 if—
  - (a) the company has at least one non-trading credit for the period that is eligible for double taxation relief, and
  - (b) the company sets the whole or part of XS against profits of the period in pursuance of a current-year provision or claim.
- (4) So much of the company's non-trading debits as is equal to that amount of XS must be allocated to the profits against which that amount of XS is set in pursuance of the current-year provision or claim.
- (5) In this section, if the company has a non-trading deficit (“D”) on its loan relationships for the period—
 

CB is so much of D as is the subject of a carry-back claim,  
 CF is so much of D as is carried forward to a subsequent accounting period in accordance with a carry-forward provision,  
 GR is so much of D as is surrendered as group relief under section 99 of CTA 2010, and  
 if

$$D - (\text{CB} + \text{CF} + \text{GR})$$

- (6) For the purposes of subsections (1) and (3), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (7) In this section—
 

“carry-back claim” means a claim—

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- (a) under section 389(1) of CTA 2009 (insurance companies: carry-back, to earlier accounting periods, of non-trading deficit on loan relationships),  
or
- (b) under section 459(1)(b) of CTA 2009 (carry-back: other companies),  
“carry-forward provision” means—
  - (a) section 391 of CTA 2009 (insurance companies), or
  - (b) section 457(1) of CTA 2009 (other companies),“current-year provision or claim” means—
  - (a) section 388(1) of CTA 2009 (insurance companies: non-trading deficit on loan relationships set against current year's profits), or
  - (b) a claim under section 459(1)(a) of CTA 2009 (other companies: setting of deficit against current year's profits),“non-trading credit” means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships),  
“non-trading debit” means a non-trading debit for the purposes of that Part, and  
“TNTD” is the total amount of the company's non-trading debits for the period.

## **55 Current year's non-trading deficits on loan relationships**

- (1) Subsection (5) applies for the purposes of section 42 if conditions A and B are met.
- (2) Condition A is that the company—
  - (a) has no non-trading credits for the period, or
  - (b) has non-trading credits for the period but none of those credits is eligible for double taxation relief.
- (3) For the purposes of subsection (2)(b), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.
- (4) Condition B is that an amount (“the deficit”) is set against any of the company's profits for the period—
  - (a) under section 388(1) of CTA 2009 (insurance company's non-trading deficit on loan relationships set against current year's profits), or
  - (b) under section 459(1)(a) of CTA 2009 (other company's non-trading deficit on loan relationships set against current year's profits).
- (5) The deficit can be allocated only to profits against which the deficit is set under section 388(1) or 459(1)(a) of CTA 2009.
- (6) In this section “non-trading credit” means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships).

## **56 Non-trading debits on intangible fixed assets**

- (1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

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- (2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - CF$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit.

- (3) In subsection (2)—

TNTD is the total amount of the company's non-trading debits for the period, and CF is the amount (if any) carried forward to the next accounting period under section 753(3) of CTA 2009 (carry forward of non-trading loss so far as neither subject to a claim to set it against profits of current period nor surrendered by way of group relief).

- (4) For the purposes of subsection (1), a non-trading credit relating to an item is “eligible for double taxation relief” if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

- (5) In this section—

“non-trading credit” means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

“non-trading debit” means a non-trading debit for the purposes of that Part.

#### *Taking account of foreign tax underlying dividends*

### **57 Credit in respect of dividend: taking account of underlying tax**

- (1) Subsections (2) and (3) apply if, as a result of provision made by the arrangements, underlying tax is to be taken into account in considering whether any and (if so) what credit is to be allowed against corporation tax, income tax or capital gains tax in respect of a dividend.
- (2) The amount of underlying tax to be taken into account as a result of the provision is to be calculated—
- under section 58 if the dividend is one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, and
  - under section 61 if the dividend is not one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom.
- (3) No underlying tax is to be taken into account as a result of the provision if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of the territory in respect of an amount determined by reference to the dividend.
- (4) See also—
- section 63 (underlying tax paid in the United Kingdom, or otherwise outside the non-UK territory, treated in some cases as underlying tax paid in the non-UK territory), and
  - section 65 (underlying tax paid in respect of profits of a company which pays a dividend treated in some cases as underlying tax paid in respect of profits of company to which dividend is paid).

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## **58 Calculation if dividend paid by non-resident company to resident company**

(1) A calculation under this section (see section 57(2)(a)) is as follows—

*Step 1* Calculate the amount of the foreign tax borne on the relevant profits by the company paying the dividend.

*Step 2* Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

*Step 3* Calculate the amount given by—

$$(D + PA) \times M$$

where—

D is the amount of the dividend,

PA is the amount given by the calculation at Step 2, and

M is the rate of corporation tax applicable to profits of the recipient for the accounting period in which the dividend is received or, if there is more than one such rate, the average rate over the whole of that accounting period.

*Step 4* If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

(a) set off against the recipient's own tax under that law, or

(b) paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

*Step 5* If the amount given by the calculation at Step 2 is less than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 4.

*Step 6* If the amount given by the calculation at Step 2 is equal to or more than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 3 but reduced by any amount calculated at Step 4.

(2) In this section “UT” means the amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1).

## **59 Meaning of “relevant profits” in section 58**

(1) This section applies for the purposes of section 58.

(2) “Relevant profits”, if the dividend is within subsection (3), means the profits in respect of which the dividend is treated as paid for the purposes of section 931H of CTA 2009 (dividends derived from transactions not designed to reduce tax).

(3) A dividend is within this subsection if—

(a) it is received in an accounting period of the recipient in which the recipient is not a small company for the purposes of Part 9A of CTA 2009 (company distributions: see section 931S of that Act), and

(b) for the purposes of section 931H of that Act, it is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section).

(4) “Relevant profits”, if the dividend is not within subsection (3) but is paid for a specified period, means—

(a) the distributable profits of that period, plus

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- (b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.
- (5) “Relevant profits”, if the dividend is not within subsection (3) and is not paid for a specified period, means—
  - (a) the distributable profits of the last period for which accounts of the company were made up which ended before the dividend became payable, plus
  - (b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.
- (6) In subsection (4)(b) or (5)(b), the reference to distributable profits of preceding periods does not include—
  - (a) profits previously distributed, or
  - (b) profits previously treated as relevant profits for the purposes of [F7 section 58 or 61 of this Act], section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.
- (7) For the purposes of subsection (4)(b) or (5)(b), the profits of the most recent preceding period are to be taken into account first, then the profits of the next most recent preceding period, and so on.
- (8) In this section “distributable profits”, in relation to a company, means the profits available for distribution as shown in accounts relating to the company—
  - (a) drawn up in accordance with the law of the country or territory under whose law the company is incorporated or formed, and
  - (b) making no provision for reserves, bad debts, impairment losses or contingencies other than such as is required to be made under the law of that country or territory.
- (9) The reference in subsection (6)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

#### **Textual Amendments**

- F7** Words in s. 59(6)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), **4(2)**

## **60 Underlying tax to be left out of account on claim to that effect**

- (1) Subsection (2) applies if—
  - (a) under the arrangements a company resident in the United Kingdom makes a claim for an allowance by way of credit in accordance with this Chapter, and
  - (b) the claim relates to a dividend paid to the company by a company resident outside the United Kingdom.
- (2) The claim may be framed so as to exclude amounts of underlying tax specified for the purpose in the claim.
- (3) Any amounts of underlying tax so excluded are to be left out of account for the purposes of section 57.



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## **61 Calculation if section 58 does not apply**

A calculation under this section (see section 57(2)(b)) is as follows—

*Step 1* Calculate the amount of the foreign tax borne on the relevant profits by the body corporate paying the dividend.

*Step 2* Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

*Step 3* If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

set off against the recipient's own tax under that law, or

paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

*Step 4* The amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1) is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 3.

## **62 Meaning of “relevant profits” in section 61**

- (1) This section applies for the purposes of section 61.
- (2) “Relevant profits”, if the dividend is paid for a specified period, means—
  - (a) the profits of that period, plus
  - (b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.
- (3) “Relevant profits”, if the dividend is not paid for a specified period but is paid out of specified profits, means those profits.
- (4) “Relevant profits”, if the dividend is paid neither for a specified period nor out of specified profits, means—
  - (a) the profits of the last period for which accounts of the body corporate paying the dividend were made up which ended before the dividend became payable, plus
  - (b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.
- (5) In subsection (2)(b) or (4)(b), the reference to distributable profits of preceding periods does not include—
  - (a) profits previously distributed, or
  - (b) profits previously treated as relevant profits for the purposes of [F8 section 58 or 61 of this Act], section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.
- (6) For the purposes of subsection (2)(b) or (4)(b), the profits of the most recent preceding period are first to be taken into account, then the profits of the next most recent preceding period, and so on.
- (7) In this section “distributable profits”, in relation to a period, means profits available for distribution of the period.
- (8) The reference in subsection (5)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

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### Textual Amendments

- F8** Words in s. 62(5)(b) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), **4(3)**

### *Taking account of tax underlying dividends that is not foreign tax*

#### **63 Non-UK company dividend paid to 10% investor: relief for UK and other tax**

- (1) If condition A is met, and one of conditions B and C is met, subsection (5) applies for the purpose of allowing, under the arrangements, credit against corporation tax in respect of a dividend paid by a company resident outside the United Kingdom (“the overseas company”) to another company (“the recipient company”).
- (2) Condition A is that the recipient company—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the overseas company.
- (3) Condition B is that the recipient company is resident in the United Kingdom.
- (4) Condition C is that—
  - (a) the recipient company is resident outside the United Kingdom, but
  - (b) the dividend forms part of the profits of a permanent establishment of the recipient company in the United Kingdom.
- (5) There is to be taken into account, as if it were tax payable under the law of the territory (“territory R”) in which the overseas company is resident—
  - (a) any income tax or corporation tax payable by the overseas company in respect of its profits, and
  - (b) any tax which, under the law of any territory outside the United Kingdom other than territory R, is payable by the overseas company in respect of its profits.
- (6) For the purposes of subsection (2), one company (“S”) is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in S.

### *Tax underlying dividend treated as underlying tax paid by dividend's recipient*

#### **64 Meaning of “dividend-paying chain” of companies**

- (1) For the purposes of sections 65, 67 and 70 there is a dividend-paying chain if—
  - (a) condition A is met, and
  - (b) one of conditions B to D is met.
- (2) Condition A is that a company (“the second company”) pays a dividend to another company (“the first company”).

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- (3) Condition B is that there is a third company which is a 10% associate of, and pays a dividend to, the second company.
- (4) Condition C is that there is a succession of companies consisting of—
  - (a) a third company which is a 10% associate of, and pays a dividend to, the second company, and
  - (b) a fourth company which is a 10% associate of, and pays a dividend to, the third company.
- (5) Condition D is that there is a succession of companies consisting of—
  - (a) a third company which is a 10% associate of, and pays a dividend to, the second company, and
  - (b) two or more companies (the fourth and fifth companies, and so on) each of which is a 10% associate of, and pays a dividend to, the company above it in the succession.
- (6) For the purposes of this section, a company (“X”) is a 10% associate of another company (“H”) if H—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in X or at least 10% of the ordinary share capital of X.
- (7) For the purposes of subsection (6), a company (“S”) is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in S.

## **65 Relief for underlying tax paid by company lower in dividend-paying chain**

- (1) Subsection (4) applies if conditions E and F are met.
- (2) Condition E is that there is a dividend-paying chain (see section 64) in which—
  - (a) the first company is the recipient company mentioned in section 63, and
  - (b) the second company is the overseas company mentioned in that section.
- (3) Condition F is that there is underlying tax, payable by a company (“L”) lower in the chain than the second company, that would be taken into account under this Part if—
  - (a) the dividend paid by L to the company (“K”) above L in the chain had been paid—
    - (i) by a company resident outside the United Kingdom to a company resident in the United Kingdom, and
    - (ii) at the time when the dividend paid by the second company is received by the first company, and
  - (b) double taxation arrangements had provided for the underlying tax to be taken into account.
- (4) The underlying tax is to be treated—
  - (a) for the purposes of section 63(5), and
  - (b) for the purposes of subsection (3),as tax paid by K in respect of its profits, but see section 66 (limitations).
- (5) In applying section 63 for the purpose of deciding whether condition F is met, read section 63(2) as if “, or at least 10% of the ordinary share capital of, ” were inserted after “at least 10% of the voting power in”.

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- (6) Section 58 (first method of calculating amount of underlying tax to be taken into account) does not apply for the purposes of subsections (3) and (4) unless the company referred to in subsection (2)(a) is resident in the United Kingdom and, even if that company is resident in the United Kingdom, section 58 applies for those purposes only—
  - (a) if K and L are not resident in the same territory, or
  - (b) in such other cases as may be prescribed by regulations made by the Treasury.
- (7) Section 61 (second method of calculation) applies for the purposes of subsections (3) and (4) if section 58 does not apply for those purposes.

## **66 Limitations on section 65(4)**

- (1) Section 65(4) is subject to the limitations set out in subsections (2) and (3).
- (2) No tax is to be taken into account in respect of a dividend paid by a company resident in the United Kingdom except—
  - (a) corporation tax, and
  - (b) any tax for which the company is entitled to credit under this Part.
- (3) No tax is to be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account, under the provisions of this Part other than section 65(4), had the other company been resident in the United Kingdom.

*Tax underlying dividends: restriction of relief, and particular cases*

## **67 Restriction of relief if underlying tax at rate higher than rate of corporation tax**

- (1) Subsection (6) applies if—
  - (a) conditions A and B are met, and
  - (b) one of conditions C and D is met.
- (2) Condition A is that a company (“the claimant company”) makes a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom (“the overseas company”).
- (4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—
  - (a) that amount would not be, or would not be included in, the underlying tax, or
  - (b) any part of that amount would not be included in the underlying tax,
 but for the existence of, or but for there having been, an avoidance scheme (see section 68).
- (5) Condition D is that—
  - (a) there is a dividend-paying chain (see section 64) in which—
    - (i) the first company is the claimant company, and
    - (ii) the second company is the overseas company, and

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- (b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—
  - (i) that amount would not be, or would not be included in, the underlying tax, or
  - (ii) any part of that amount would not be included in the underlying tax, but for the existence of, or but for there having been, an avoidance scheme (see section 68).
- (6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.
- (7) For the purposes of this section, tax payable by a company is “tax payable at a high rate” so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.
- (8) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

## **68 Meaning of “avoidance scheme” in section 67**

- (1) In section 67 “avoidance scheme” means any scheme or arrangement in respect of which each of conditions A to C is met.
- (2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (3) Condition B is that the parties to the scheme or arrangement include—
  - (a) the company which is the claimant company for the purposes of section 67,
  - (b) a company related to the claimant company, or
  - (c) a person connected with the claimant company.
- (4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.
- (5) For the purposes of subsection (3)(b), a company (“R”) is related to the claimant company if the claimant company—
  - (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in R.
- (6) For the purposes of subsection (3)(c), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.
- (7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—
  - (a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),

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- (b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and
  - (c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.
- (8) For the purposes of subsection (5), the claimant company is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.
- (9) In this section “arrangement” means an arrangement of any kind, whether in writing or not.

## **69 Dividends paid out of transferred profits**

- (1) This section applies if—
- (a) a company resident outside the United Kingdom (“company A”) has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,
  - (b) some or all of those profits become profits of another company resident outside the United Kingdom (“company B”) otherwise than as a result of the payment of a dividend to company B, and
  - (c) company B pays a dividend out of those profits to another company, wherever resident.
- (2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—
- (a) by any company resident outside the United Kingdom (whether or not company B),
  - (b) to a company resident in the United Kingdom,
- as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1) (b).
- (3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

## **70 Underlying tax reflecting interest on loans**

- (1) Subsection (2) applies if—
- (a) a bank, or a company connected with a bank, makes a claim for an allowance by way of credit in accordance with this Chapter,
  - (b) there is a dividend-paying chain (see section 64) in which—
    - (i) the first company is the claimant, and
    - (ii) the second company is a company resident outside the United Kingdom,
  - (c) the claimant—

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- (i) controls directly or indirectly, or
  - (ii) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the second company,
  - (d) the claim relates to underlying tax on a dividend paid by the second company,
  - (e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends earned or received in the course of its business by a company (“the receiving company”) which is—
    - (i) the second company, or
    - (ii) a company lower in the chain than the second company, and
  - (f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.
- (2) The amount of the credit for the tax mentioned in subsection (1)(e) (“the non-UK tax”) is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—

$ID - E$

where—

ID is the amount of the interest or dividends mentioned in subsection (1)(e), and  
E is the amount of the receiving company's expenditure which is properly attributable to the earning of that interest or those dividends.

- (3) For the purposes of subsection (1)(a)—
- (a) “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and
  - (b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.
- (4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

## 71 Foreign taxation of group as single entity

- (1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory (“the responsible company”) in respect of the aggregate profits, or aggregate profits and aggregate gains, of—
- (a) that company and another company resident in the territory, or
  - (b) that company and two or more other companies resident in the territory,
- taken together as a single taxable entity.
- (2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the “non-resident companies”) to another company (“the payee company”), has effect as if—
- (a) the non-resident companies, taken together, were a single company,

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- (b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and
  - (c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.
- (3) In particular, this Part has effect as if—
- (a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and
  - (b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.
- (4) For the purposes of this section, a company (“X”) is related to another company (“H”) if H—
- (a) controls directly or indirectly, or
  - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in X.
- (5) For the purposes of subsection (4), H is a subsidiary of another company (“P”) if P controls, directly or indirectly, at least 50% of the voting power in H.

*Unrelieved foreign tax on profits of overseas permanent establishment*

**72 Application of section 73(1)**

- (1) Section 73(1) applies if, in an accounting period of a company resident in the United Kingdom—
- (a) the amount of the credit for foreign tax which under the arrangements would, if section 42 were ignored, be allowable against corporation tax in respect of the company's qualifying income from an overseas permanent establishment, exceeds
  - (b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the company's qualifying income from that overseas permanent establishment.
- (2) For the purposes of subsection (1) and section 73(1), the company's qualifying income from an overseas permanent establishment is the profits of the overseas permanent establishment which are—
- (a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom, <sup>F9</sup>...
  - <sup>F9</sup>(b) .....
- (3) In sections 73 to 78—
- “the company” means the company mentioned in subsection (1),
  - “the excess” means the excess referred to in that subsection,
  - “the PE” means the overseas permanent establishment mentioned in that subsection, and
  - “period A” means the accounting period mentioned in that subsection.



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### Textual Amendments

**F9** S. 72(2)(b) and word omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 234](#)

## 73 Carry-forward and carry-back of unrelieved foreign tax

- (1) For the purposes of allowing credit relief under this Part, the excess is to be treated—
  - (a) as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in the accounting period after period A (whether or not the company in fact has any qualifying income from that source in the accounting period after period A), or
  - (b) in accordance with the rules in section 74, as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in one or more of the recent periods, or
  - (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).
- (2) If in period A the company ceases to have the PE, the excess, so far as it is not treated as mentioned in subsection (1)(b), is to be reduced to nil (so that none of the excess is to be treated as mentioned in subsection (1)(a)).
- (3) If an amount is treated as mentioned in subsection (1)(b) it is not to be so treated for the purpose of any further application of subsection (1).
- (4) In subsection (1)(b) “recent period” means an accounting period which is earlier than period A but begins not more than 3 years before period A.

## 74 Rules for carrying back unrelieved foreign tax

- (1) This section sets out the rules mentioned in section 73(1)(b).
- (2) The first rule is that—
  - (a) credit for the excess, or for any remaining balance of the excess, is allowed against corporation tax in respect of a later recent period, before
  - (b) credit for any of the excess is allowed against corporation tax in respect of any earlier recent period.
- (3) The second rule is that, before allowing credit for any of the excess against corporation tax in respect of income of any particular accounting period (“period P”), credit for foreign tax is allowed—
  - (a) first for foreign tax in respect of the income of period P, other than amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period other than period P, and
  - (b) then for amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period before period P.
- (4) In subsection (2) “recent period” means an accounting period which is earlier than period A but begins not more than 3 years before period A.

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## **75 Two or more establishments treated as a single establishment**

- (1) Subsection (2) applies if, under the law of a territory outside the United Kingdom, tax is charged in respect of the profits of two or more overseas permanent establishments in that territory, taken together.
- (2) For the purposes of the provisions of sections 72 to 78 other than the excepted provisions, those overseas permanent establishments are to be treated as if they together constituted a single overseas permanent establishment.
- (3) In subsection (2) “the excepted provisions” means section 73(2), this section and section 77.

## **76 Former and subsequent establishments regarded as distinct establishments**

- (1) If the company—
  - (a) at any time ceases to have a particular overseas permanent establishment in a particular territory (“the old establishment”), but
  - (b) subsequently again has an overseas permanent establishment in that territory (“the new establishment”),
 the old establishment and the new establishment are, for the purposes of the provisions of sections 72 to 78 other than the excepted provisions, to be regarded as different overseas permanent establishments.
- (2) In subsection (1) “the excepted provisions” means sections 73(2), 75 and 77.

## **77 Claims for relief under section 73(1)**

- (1) The excess is to be treated as mentioned in section 73(1) only on a claim.
- (2) A claim under subsection (1) must specify—
  - (a) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(a), and
  - (b) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(b).
- (3) A claim under subsection (1) must be made not more than—
  - (a) 4 years after the end of period A, or
  - (b) if later, 1 year after the end of the accounting period in which the foreign tax concerned is paid.

## **78 Meaning of “overseas permanent establishment”**

- (1) For the purposes of sections 72 to 76 “overseas permanent establishment” means a permanent establishment through which the company carries on a trade in a territory outside the United Kingdom.
- (2) In subsection (1) “permanent establishment”—
  - (a) if the arrangements are double taxation arrangements [<sup>F10</sup>which contain a relevant non-discrimination provision], has the meaning given by the arrangements, and
  - (b) if the arrangements are double taxation arrangements [<sup>F11</sup>which do not contain a relevant non-discrimination provision], or if the arrangements are unilateral

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relief arrangements for a territory outside the United Kingdom, [F12]has the meaning given by the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development in July 2010 (“the OECD”) or such other document published by the OECD in place of it as is designated from time to time by order made by the Treasury.]

[F13(3) In subsection (2) “relevant non-discrimination provision” means a provision to the effect that the taxation on a permanent establishment of an enterprise of a state which is party to the arrangements (a “contracting state”) is not to be less favourably levied in any other contracting state than the taxation levied on enterprises of that other contracting state carrying on the same activities.]

#### Textual Amendments

- F10** Words in s. 78(2)(a) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 28\(2\)\(a\)](#), 31
- F11** Words in s. 78(2)(b) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 28\(2\)\(b\)\(i\)](#), 31
- F12** Words in s. 78(2)(b) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 28\(2\)\(b\)\(ii\)](#), 31
- F13** S. 78(3) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 28\(3\)](#), 31

*Action after adjustment of amount payable by way of UK or foreign tax*

## 79 Time limits for action if tax adjustment makes credit excessive or insufficient

- (1) Subsection (2) applies to a claim or assessment if—
- (a) the amount of any credit given under the arrangements is reduced under section 34, or becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any other territory,
  - (b) the reduction or adjustment gives rise to the claim or assessment, and
  - (c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.
- (2) Nothing in—
- (a) the Tax Acts, and
  - (b) the enactments relating to capital gains tax,
- limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.
- (3) In subsection (1)(c) “material determination” means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

## 80 Duty to give notice that adjustment has rendered credit excessive

- (1) This section applies if—
- (a) any credit for foreign tax has been allowed to a person under the arrangements,

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- (b) later, the amount of that credit is reduced under section 34, or becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom, and
  - (c) the reduction or adjustment is not a Lloyd's adjustment (see subsection (5)).
- (2) The person must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.
- (3) Notice under subsection (2) is to be given—
- (a) to an officer of Revenue and Customs, and
  - (b) within one year from when the reduction or adjustment is made.
- (4) If the person fails to comply with the requirements imposed by subsections (2) and (3), the person is liable to a penalty not greater than the amount by which the credit has been reduced or has become excessive as a result of the adjustment.
- (5) For the purposes of subsection (1)(c), the reduction or adjustment is a “Lloyd's adjustment” if the consequences of the reduction or adjustment in relation to the credit are to be given effect in accordance with regulations under—
- (a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or
  - (b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).
- (6) In this section so far as it relates to capital gains tax “notice” means notice in writing.

*Schemes and arrangements designed to increase relief: anti-avoidance*

## **81 Giving a counteraction notice**

- (1) Subsection (2) applies if an officer of Revenue and Customs considers, on reasonable grounds, that each of conditions A to D of section 82 is or may be met in relation to a person.
- (2) The officer may give the person a notice which—
- (a) informs the person of the officer's view under subsection (1),
  - (b) specifies the chargeable period in relation to which the officer formed that view,
  - (c) specifies, if the amount of foreign tax considered by the officer to meet condition B of section 82 is an amount of underlying tax, the body corporate whose payment of foreign tax is relevant to that underlying tax, and
  - (d) informs the person that, as a result of the giving of the notice, section 90(2) will apply in relation to the person's tax return for the chargeable period specified if each of conditions A to D of section 82 is met in relation to that period.
- (3) Section 92 (when notice may be given after tax return made) imposes limits on when the power under subsection (2) is exercisable.
- (4) In this section “foreign tax” includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.
- (5) In this section so far as it relates to capital gains tax—

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“chargeable period” means tax year (see section 288(1ZA) of TCGA 1992),  
and  
“notice” means notice in writing.

## **82 Conditions for the purposes of section 81(1)**

- (1) Conditions A to D are the conditions mentioned in section 81(1).
- (2) Condition A is that, in respect of any income or chargeable gain—
  - (a) taken into account for the purposes of determining a person's liability to UK tax in a chargeable period, or
  - (b) to be taken into account for the purposes of determining a person's liability to UK tax in a chargeable period,there is an amount of foreign tax for which, under the arrangements, credit is allowable against UK tax for the period.
- (3) Condition B is that there is a scheme or arrangement the main purpose of which, or one of the main purposes of which, is to cause an amount of foreign tax to be taken into account in the person's case for the period.
- (4) Condition C is that the scheme or arrangement is within section 83.
- (5) Condition D is that T is more than a minimal amount, where T is the sum of—
  - (a) the total amount of the claims for credit that the person has made, or is in a position to make, for the period (“the counteraction period”), and
  - (b) the total amount of all connected-person claims.
- (6) In subsection (5) “connected-person claim” means a claim that any person connected to the person has made, or is in a position to make, for any chargeable period that overlaps the counteraction period by at least one day.
- (7) In this section—

“chargeable period”, in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992),

“foreign tax” includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory, and

“UK tax” means income tax, corporation tax or capital gains tax.
- (8) Section 286 of TCGA 1992 (meaning of “connected”) applies for the purposes of subsection (6) so far as applying in relation to capital gains tax.

## **83 Schemes and arrangements referred to in section 82(4)**

- (1) For the purposes of section 82(4), a scheme or arrangement is within this section if it is within subsection (2) or (4).
- (2) A scheme or arrangement is within this subsection if—
  - (a) it is not an underlying-tax scheme or arrangement, and
  - (b) one or more of sections 84 to 88 apply to it.
- (3) For the purposes of this section, a scheme or arrangement is an “underlying-tax” scheme or arrangement if its main purpose, or one of its main purposes, is to cause

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an amount of underlying tax allowable in respect of a dividend paid by an overseas-resident body corporate to be taken into account in a person's case.

- (4) A scheme or arrangement is within this subsection if—
  - (a) it is an underlying-tax scheme or arrangement, and
  - (b) one or more of sections 84 to 88 would, on the assumption in subsection (5), apply to it.
- (5) The assumption is that the body corporate is resident in the United Kingdom.
- (6) Nothing in subsection (5) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.
- (7) In subsection (3) “overseas-resident” means resident in a territory outside the United Kingdom.

#### **84 Section 83(2) and (4): schemes enabling attribution of foreign tax**

- (1) This section applies to a scheme or arrangement if—
  - (a) the scheme or arrangement enables a participant to pay, in respect of a source of income or chargeable gain, an amount of foreign tax, and
  - (b) all or part of that amount of foreign tax is properly attributable to another source of income or chargeable gain.
- (2) In subsection (1) “participant” means a person who is party to, or concerned in, the scheme or arrangement.

#### **85 Section 83(2) and (4): schemes about effect of paying foreign tax**

- (1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person (“C”) who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for [<sup>F14</sup>in respect of the payment of an amount of foreign tax (“the FT amount”)].
- [<sup>F15</sup>(2) The condition is that, when C entered into the scheme or arrangement, it could reasonably be expected that the effect on the foreign-tax total of the FT amount being paid or payable would be to increase that total by less than amount X.]
- (3) In [<sup>F16</sup>subsection (2)]—
 

“the foreign-tax total” means the amount found by—

  - (a) totalling the amounts of foreign tax paid or payable by the participants in respect of the transaction or transactions forming part of the scheme or arrangement, and
  - (b) taking into account any reliefs that arise to the participants, including any reliefs arising to any one or more of the participants as a consequence of [<sup>F17</sup>the FT amount being paid or payable <sup>F18</sup>...], and

“amount X” means the amount allowable to C as a credit in respect of the payment of the FT amount.
- (4) In subsection (3)—
 

“participant” means a person who is party to, or concerned in, the scheme or arrangement, and

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“reliefs” means reliefs, deductions, reductions or allowances against or in respect of any tax.

- (5) In subsection (1) so far as it relates to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).

#### Textual Amendments

- F14** Words in s. 85(1) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(a\)](#)
- F15** S. 85(2) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(b\)](#)
- F16** Words in s. 85(3) substituted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(c\)\(i\)](#)
- F17** Words in s. 85(3) substituted (with effect in relation to amounts of foreign tax payable on or after 21.10.2009 in accordance with [Sch. 11 para. 3](#) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 2\(3\)](#)
- F18** Words in s. 85(3) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(1\)\(c\)\(ii\)](#)

#### [<sup>F19</sup>85A Section 83(2) and (4): schemes involving deemed foreign tax

- (1) This section applies to a scheme or arrangement if in relation to a claimant—
- an amount (“amount X”) is treated by virtue of a provision of the Tax Acts as if it were an amount of foreign tax paid or payable [<sup>F20</sup>by the claimant] in respect of a source of income, and
  - condition A or B is met.
- (2) Condition A is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant.
- (3) Condition B is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement—
- an amount of real foreign tax (“the RFT amount”) would be paid or payable by a participant, but
  - the effect on the foreign-tax total of the RFT amount being so paid or payable would be to increase the foreign-tax total by less than the amount allowable to the claimant as a credit in respect of amount X.
- (4) In this section—
- “claimant ” means a person who for a chargeable period has claimed, or is in a position to claim, for any credit that under the arrangements is to be allowed for foreign tax;
  - “the foreign-tax total ” has the meaning given by section 85(3), except that the reference to “the FT amount being paid or payable [<sup>F21</sup>by C]” must be read as a reference to “the RFT amount being paid or payable by any of them”;
  - “income ” includes a chargeable gain;
  - “participant ” means a person who is party to, or concerned in, the scheme or arrangement;
  - “real foreign tax ” means—

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- (a) in a case involving section 10 (accrued income profits), the foreign tax chargeable in respect of the interest on the securities, as mentioned in subsection (1)(c) of that section,
- (b) in a case involving section 792 or 794 of CTA 2010 (manufactured overseas dividends), the foreign tax chargeable in respect of the overseas dividend of which the manufactured overseas dividend is representative, as mentioned in section 790 of that Act, and
- (c) in any other case, the foreign tax chargeable in respect of the source of income of which the source mentioned in subsection (1)(a) is representative.]

#### Textual Amendments

- F19** S. 85A inserted (with effect in accordance with Sch. 11 para. 4(2)(3) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 4\(1\)](#)
- F20** Words in s. 85A(1)(a) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(2\)\(a\)](#)
- F21** Words in s. 85A(4) omitted (with effect in accordance with Sch. 11 para. 5(3) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 5\(2\)\(b\)](#)

#### 86 Section 83(2) and (4): schemes about claims or elections etc

- (1) This section applies to a scheme or arrangement if <sup>F22</sup>...—
- (a) a step is taken by a participant, or
  - (b) a step that could have been taken by a participant is not taken,
- and that action or failure to act has the effect of increasing, or giving rise to, a claim by a participant for an allowance by way of credit under this Part.
- (2) The steps mentioned in subsection (1) are steps that may be taken—
- (a) under the law of any territory, or
  - (b) under double taxation arrangements made in relation to any territory.
- (3) The steps mentioned in subsection (1) include—
- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
  - (b) making elections for tax purposes.
- [<sup>F23</sup>(3A) Reference in subsection (1) to a step that is taken or not taken by a participant includes one that was taken or not taken by a participant before the scheme or arrangement was made.
- (3B) The reason for taking or not taking a step does not matter so long as it has the effect mentioned in subsection (1).]
- (4) In subsection (1) “participant” means a person who is party to, or concerned in, the scheme or arrangement.

#### Textual Amendments

- F22** Words in s. 86(1) omitted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 11 para. 6\(1\)\(a\)](#)



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**F23** S. 86(3A)(3B) inserted (with effect in accordance with Sch. 11 para. 6(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 6(1)(b)**

## **87 Section 83(2) and (4): schemes that would reduce a person's tax liability**

- (1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.
- (2) The condition is that amount A is less than amount B.
- (3) Amount A is the amount of UK tax payable by the person in respect of income and chargeable gains arising in the chargeable period.
- (4) Amount B is the amount of UK tax that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.
- (5) In this section “UK tax” means income tax, corporation tax and capital gains tax.
- (6) In this section so far as it relates to capital gains tax “chargeable period” means tax year (see section 288(1ZA) of TCGA 1992).

## **88 Section 83(2) and (4): schemes involving tax-deductible payments**

- (1) This section applies to a scheme or arrangement if the scheme or arrangement includes—
  - (a) the making by a person (“P”) of a relevant payment or payments, and
  - (b) the giving, in respect of the payment or payments, of qualifying consideration.
- (2) For the purposes of subsection (1), a payment is a “relevant payment” if all or part of it may be brought into account—
  - (a) in calculating P's income for the purposes of income tax or corporation tax, or
  - (b) in calculating P's chargeable gains for the purposes of capital gains tax.
- (3) For the purposes of subsection (1), consideration is “qualifying consideration” if—
  - (a) all or part of it consists of a payment made to P or a person connected with P, and
  - (b) tax is chargeable in respect of the payment under the law of a territory outside the United Kingdom.
- (4) In this section “payment” includes a transfer of money's worth.
- (5) For the purposes of this section, whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

## **89 Contents of counteraction notice**

- (1) Subsections (2) and (3) apply if an officer of Revenue and Customs gives a person a counteraction notice.
- (2) The notice may specify the adjustments that, in the view of the officer, section 90 requires the person to make.

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- (3) If the notice specifies under section 81(2)(c) a body corporate resident outside the United Kingdom, the adjustments specified may include treating the body as having paid, or being liable to pay, only so much foreign tax as would have been allowed to it as a credit if—
- (a) it were resident in the United Kingdom, and
  - (b) a counteraction notice had been given to it as regards an amount of foreign tax.
- (4) In this section “foreign tax” includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.

## **90 Consequences of counteraction notices**

- (1) If—
- (a) a counteraction notice has been given to a person in respect of a chargeable period specified in the notice, and
  - (b) that chargeable period is a chargeable period in relation to which each of conditions A to D of section 82 is met,
- subsection (2) applies to the person's tax return for the period.
- (2) The person must in the return make, or must amend the return so as to make, such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 82.

## **91 Counteraction notices given before tax return made**

- (1) Subsection (2) applies if—
- (a) an officer of Revenue and Customs gives a counteraction notice to a person before the person has made the person's tax return for the chargeable period specified in the notice, and
  - (b) the person makes a tax return for that period before the end of the 90 days beginning with the day on which the notice is given.
- (2) The person may—
- (a) make a tax return that disregards the notice, and
  - (b) at any time after making the return and before the end of the 90 days, amend the return for the purpose of complying with the provision referred to in the notice.
- (3) Subsection (2)(b) does not prevent the return becoming incorrect if the return—
- (a) is not amended in accordance with subsection (2)(b) for the purpose of complying with the provision referred to in the notice, but
  - (b) ought to have been so amended.

## **92 Counteraction notices given after tax return made**

- (1) This section applies if—
- (a) a person has made a tax return for a chargeable period, and

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- (b) ignoring the restrictions imposed by this section, an officer of Revenue and Customs has power to give the person a counteraction notice in relation to the period.
- (2) The officer may give the person a counteraction notice in relation to the period only if a notice of enquiry has been given to the person in respect of the return.
- (3) After any enquiries into the return have been completed, the officer may give the person a counteraction notice in relation to the period only if conditions E and F are met.
- (4) Condition E is that, at the time the enquiries were completed, no officer of Revenue and Customs could have been reasonably expected, on the basis of the information made available to Her Majesty's Revenue and Customs before that time, to have been aware that the circumstances were such that a counteraction notice could have been given to the person in relation to the period.
- (5) Condition F is that—
  - (a) the person was requested to provide information during an enquiry into the return, and
  - (b) if the person had duly complied with the request, an officer of Revenue and Customs could have been reasonably expected to give the person a counteraction notice in relation to the period.
- (6) Section 94 sets out the circumstances in which, for the purposes of condition E, information is made available.

### **93 Amendment, closure notices and discovery assessments in section 92 cases**

- (1) This section applies if a person is given a counteraction notice in relation to a chargeable period after having made a tax return for the period.
- (2) The person may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the 90 days beginning with the day on which the notice is given.
- (3) If the counteraction notice is given after the person has been given a notice of enquiry in relation to the return, no closure notice may be given in relation to the return before the deadline.
- (4) If the counteraction notice is given after any enquiries into the return are completed, no discovery assessment may be made as regards the income or chargeable gain to which the counteraction notice relates before the deadline.
- (5) In subsections (3) and (4) “the deadline” means—
  - (a) the end of the 90 days beginning with the day on which the counteraction notice is given, or
  - (b) if earlier, the amendment of the return for the purpose of complying with the provision referred to in the counteraction notice.
- (6) Subsection (2) does not prevent the return becoming incorrect if the return—
  - (a) is not amended in accordance with subsection (2) for the purpose of complying with the provision referred to in the counteraction notice, but
  - (b) ought to have been so amended.

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#### **94 Information made available for the purposes of section 92(4)**

- (1) This section applies for the purposes of section 92(4), and in this section—
- “the period”,
  - “the person”, and
  - “the return”,
- mean (respectively) the chargeable period, the person and the tax return mentioned in section 92(1).
- (2) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 (personal or trustee's return) and the information—
- (a) is contained in the return,
  - (b) is contained in the person's return under that section for either of the two immediately preceding tax years,
  - (c) is contained in documents accompanying a return within paragraph (a) or (b), or
  - (d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).
- (3) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 of TMA 1970 (personal return), the person carries on a trade, profession or business in partnership and the information—
- (a) is contained in a return under section 12AA of TMA 1970 (partnership return) with respect to the partnership for the period,
  - (b) is contained in a return under section 12AA of TMA 1970 with respect to the partnership for either of the two immediately preceding tax years,
  - (c) is contained in documents accompanying a return within paragraph (a) or (b), or
  - (d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).
- (4) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—
- (a) is contained in the return,
  - (b) is contained in the person's company tax return for either of the two immediately preceding accounting periods,
  - (c) is contained in documents accompanying a return within paragraph (a) or (b), or
  - (d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).
- (5) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 and the information —
- (a) is contained in any claim made as regards the period by, or on behalf of, the person acting in the same capacity as that in which the person made the return,
  - (b) is contained in any documents accompanying such a claim, or

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- (c) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim.
- (6) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—
- (a) is contained in a claim made by or on behalf of the person as regards the period,
  - (b) is contained in an application under section 751A of ICTA (applications relating to controlled foreign companies) made by or on behalf of the person which affects the return,
  - (c) is contained in any documents accompanying such a claim or application, or
  - (d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim or application.
- (7) Information is made available to Her Majesty's Revenue and Customs if the existence of the information, and the relevance of the information as regards exercise of power to give the person a counteraction notice in relation to the period—
- (a) could reasonably be expected to be inferred by an officer of Revenue and Customs from information falling within subsections (2) to (6), or
  - (b) are notified in writing by or on behalf of the person to an officer of Revenue and Customs.

## **95 Interpretation of sections 89 to 94**

- (1) This section applies for the purposes of sections 89 to 94, and subsection (4) applies also for the purposes of subsection (8).
- (2) “Chargeable period”, in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992).
- (3) “Closure notice” means a notice under—
- (a) section 28A or 28B of TMA 1970 (completion of enquiry into personal, trustee's or partnership return), or
  - (b) paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry into company return).
- (4) “Company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule (company returns).
- (5) “Counteraction notice” means a notice under section 81(2).
- (6) “Discovery assessment” means an assessment under—
- (a) section 29 of TMA 1970 (assessment to income tax or capital gains tax), or
  - (b) paragraph 41 of Schedule 18 to FA 1998 (assessment on company).
- (7) “Notice of enquiry” means a notice under—
- (a) section 9A or 12AC of TMA 1970 (enquiry into personal, trustee's or partnership return), or
  - (b) paragraph 24 of Schedule 18 to FA 1998 (enquiry into company return).
- (8) “Tax return” means—

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- (a) a return under section 8, 8A or 12AA of TMA 1970 (personal return, trustee's return or partnership return), or
- (b) a company tax return.

*Insurance companies*

**96 Companies with overseas branches: restriction of credit**

- (1) Subsection (4) applies if credit for foreign tax—
- (a) which is payable in respect of insurance business carried on by a company through a permanent establishment in the non-UK territory, and
  - (b) which is calculated otherwise than wholly by reference to profits arising in the non-UK territory,

is to be allowed (in accordance with this Part) against corporation tax charged under section 35 of CTA 2009 <sup>F24</sup>... in respect of the profits <sup>F25</sup>... of [<sup>F26</sup>non-BLAGAB long-term business] carried on by the company in an accounting period (in this section called “the relevant UK-taxable profits”).

- (2) For the purposes of subsection (1)(b), the cases in which foreign tax is “calculated otherwise than wholly by reference to profits arising in the non-UK territory” are those cases in which the charge to tax in the non-UK territory is within subsection (3).
- (3) A charge to tax is within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in calculating the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.
- (4) If this subsection applies, the amount of the credit is not to exceed the greater of—
- (a) any such part of the foreign tax as is charged by reference to profits arising in the non-UK territory, and
  - (b) the shareholders' share of the foreign tax.
- (5) For the purposes of subsection (4), the shareholders' share of the foreign tax is so much of that tax as is represented by the fraction—

$$\frac{A}{B}$$

where—

A is an amount equal to the amount of the relevant UK-taxable profits before making any deduction authorised by subsection (7), and

B is an amount equal to the excess of—

- (a) the amount taken into account as receipts of the company in calculating those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over
- (b) the amount taken into account as expenses in calculating those profits.

- (6) If there is no such excess, or if the profits are greater than any excess, the whole of the foreign tax is the shareholders' share; and, subject to that, if there are no profits, none of the foreign tax is the shareholders' share.

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- (7) If, by virtue of this section, the credit for any foreign tax is less than it otherwise would be, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the relevant UK-taxable profits.

#### Textual Amendments

- F24** Words in s. 96(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(a\)](#)  
**F25** Words in s. 96(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(b\)](#)  
**F26** Words in s. 96(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 235\(c\)](#)

### [<sup>F27</sup>97 Companies with more than one category of business: restriction of credit

- (1) This section applies if—
- an insurance company carries on more than one category of long-term business in an accounting period, and
  - there arises to the company in that period any income or gain (“the relevant income”) in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable, in accordance with Part 2 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.
- (3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

$$\frac{\text{RPRI}}{\text{TRI}}$$

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

#### Textual Amendments

- F27** Ss. 97, 97A substituted (17.7.2012) for s. 97 by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 236](#)

### 97A Commercial allocation of relevant income to different categories of long-term business

- (1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.
- (2) A method is an “acceptable commercial method” if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the

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period that is referable to a particular category of long-term business carried on by the company.

- (3) The Treasury may make regulations for the purposes of this section—
- (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.
- (4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 98 or 115 of FA 2012 for that period.]

#### Textual Amendments

**F27** Ss. 97, 97A substituted (17.7.2012) for s. 97 by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 236](#)

### <sup>F28</sup>98 Attribution for section 97 purposes if category is gross roll-up business

.....

#### Textual Amendments

**F28** S. 98 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 237](#)

### 99 Allocation of expenses etc in calculations under section 35 of CTA 2009

- (1) Subsection (2) has effect if—
- (a) an insurance company carries on any category of insurance business in a period of account,
  - (b) a calculation in accordance with the provisions applicable for the purposes of section 35 of CTA 2009 (charge on trade profits) falls to be made in relation to that category of business for that period, and
  - (c) there arises to the company in that period any income or gain in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned (“the relevant income”) is to be limited by treating the amount of the relevant income as reduced in accordance with sections 100 and 101.
- (3) In determining the amount of credit for foreign tax which is to be allowed as mentioned in subsection (2), the relevant income is not to be reduced except in accordance with that subsection.
- (4) If a 75% subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—
- (a) the purpose, or one of the main purposes, of the scheme or arrangement is to prevent or restrict the application of subsection (2) to the insurance company, and



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- (b) the subsidiary does not carry on insurance business of any description, the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary is to be found by setting off against that item the amount of expenses that would be attributable to it under section 100(1) if that item had arisen directly to the insurance company.
- (5) If the credit allowed for any foreign tax is, by virtue of subsection (2), less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the profits of the category of business concerned.
- (6) If, by virtue of subsection (4), the credit allowed for any foreign tax is less than it would be apart from that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the income of the 75% subsidiary.
- (7) For the purposes of the operation of this section in relation to any income or gain in respect of which credit is to be allowed under the arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction of the foreign tax that is attributable to that category of business in accordance with sections 97 and [F<sup>29</sup>97A].

#### Textual Amendments

**F29** Word in s. 99(7) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 238](#)

### 100 First limitation for purposes of section 99(2)

- (1) The first limitation for the purposes of section 99(2) is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.
- (2) For the purposes of subsection (1), the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.
- (3) In subsection (2) “the appropriate fraction” means the fraction given by—

$$\frac{RI}{TI}$$

where—

RI is the amount of the relevant income before any reduction in accordance with section 99(2), and

TI is the total income of the category of business concerned for the period of account in question, but if that would result in TI being nil, TI is instead the amount described in subsection (4).

- (4) That amount is so much in total of the income and gains—
- which arise to the company in the period of account in question, and
  - in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

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as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

- (5) Subsection (4) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).
- (6) In this section “the relevant income” has the meaning given by section 99(2).

## **101 Second limitation for purposes of section 99(2)**

- (1) If—
- (a) the amount of the relevant income after any reduction under section 100(1), exceeds—
  - (b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,
- the second limitation is to treat the relevant income as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.
- (2) In subsection (1) “the relevant fraction” means the fraction given by—

*RI*

### **The referable share of total relievable income and gains**

where—

“RI” is the amount of the relevant income before any reduction in accordance with section 99(2), and

“the referable share of total relievable income and gains” is so much in total of the income and gains—

- (a) which arise to the company in the period of account in question, and
- (b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

- (3) In subsection (1), any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.
- (4) Subsection (2) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).
- (5) In this section “the relevant income” has the meaning given by section 99(2).

## **<sup>F30</sup>102 Interpreting sections 99 to 101 for life assurance or gross roll-up business**

.....

### **Textual Amendments**

**F30** S. 102 omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 239](#)

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### 103 Interpreting sections 99 to 101 <sup>F31</sup>...

- (1) This section has effect for the interpretation of sections 99 to 101 <sup>F32</sup>...
- (2) The “total income” of the category of business concerned for any period of account is the amount (if any) by which—
  - (a) the sum of the amounts specified in subsection (3), exceeds—
  - (b) the sum of the amounts specified in subsection (4).
- (3) The amounts mentioned in subsection (2)(a) are—
  - (a) earned premiums, net of reinsurance,
  - (b) investment income and gains, and
  - (c) other technical income, net of reinsurance.
- (4) The amounts mentioned in subsection (2)(b) are—
  - (a) acquisition costs,
  - (b) the change in deferred acquisition costs, and
  - (c) losses on investments.
- (5) The “total relevant expenses” of the category of business concerned for any period of account is the sum of—
  - (a) the claims incurred, net of reinsurance,
  - (b) the changes in other technical provisions, net of reinsurance,
  - (c) the change in the equalisation provision, and
  - (d) investment management expenses,
 unless that sum is a negative amount, in which case the total relevant expenses is to be taken to be nil.
- (6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) are the amounts taken into account for the purposes of corporation tax.
- (7) Expressions used—
  - (a) in the paragraphs of subsections (3) to (5), and
  - (b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) which relate to the profit and loss account format (within the meaning of paragraph 1(1) and (2) of that Schedule),
 have the same meaning in those paragraphs as they have in those provisions.

#### Textual Amendments

**F31** Words in s. 103 heading omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 240\(3\)](#)

**F32** Words in s. 103(1) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 240\(2\)](#)

### 104 Interpreting sections 100 and 101: amounts referable to category of business

- (1) This section applies for the purposes of the operation of sections 100 and 101 in relation to any income or gain in respect of which credit is to be allowed under any

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double taxation arrangements or under unilateral relief arrangements for a territory outside the United Kingdom.

(2) The amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction found under subsection (3).

(3) Apply sections 97 and [F3397A] in relation to—

- (a) that category of business,
- (b) the income or gain, and
- (c) the double taxation arrangements, or unilateral relief arrangements, mentioned in subsection (1),

in order to find the fraction of the foreign tax that is attributable to that category of business.

#### Textual Amendments

**F33** Word in s. 104(3) substituted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 16 para. 241

## CHAPTER 3

### MISCELLANEOUS PROVISIONS

#### *Application of Part for capital gains tax purposes*

#### **105 Meaning of “chargeable gain”**

In this Part so far as it relates to capital gains tax “chargeable gain” has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

#### **106 Chapters 1 and 2 apply to capital gains tax separately from other taxes**

(1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.

(2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.

(3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.

(4) Foreign non-gains tax is not to be taken into account under those Chapters so far as they apply for capital gains tax purposes.

(5) In this section—

“foreign gains tax” means any tax which—

- (a) is imposed by the law of a territory outside the United Kingdom, and
- (b) is of a similar character to capital gains tax, and

“foreign non-gains tax” means tax which—

- (a) is imposed by the law of a territory outside the United Kingdom, and
- (b) is not foreign gains tax.

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*When foreign tax disregarded in applying Part for corporation tax purposes*

### **107 Disregard of foreign tax referable to derivative contract**

- (1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).
- (2) Tax is within this subsection in relation to a company so far as the tax—
  - (a) is tax under the law of a territory outside the United Kingdom, and
  - (b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.
- (3) For the purposes of this section, a payment is a “notional interest payment” if—
  - (a) a derivative contract specifies—
    - (i) a notional principal amount,
    - (ii) a period, and
    - (iii) a rate of interest,
  - (b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and
  - (c) the value of the rate is the same at all times as that of the specified rate of interest.

### **108 Disregard of foreign tax attributable to interest under a loan relationship**

- (1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).
- (2) Tax is within this subsection in relation to a company so far as the tax—
  - (a) is tax under the law of a territory outside the United Kingdom, and
  - (b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.
- (3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

### **109 Repo cases in which no disregard under section 108**

- (1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—
  - (a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and
  - (b) that time is in the period for which the repo has effect.
- (2) In this section—
  - “debtor repo” has the meaning given by the repo-definition section,
  - “the initial sale”, in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and
  - “the repo-definition section” means section 548 of CTA 2009.

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- (3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—
- (a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and
  - (b) the time when it becomes apparent that that subsequent purchase will not take place.

## **110 Stock-lending cases in which no disregard under section 108**

- (1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—
- (a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and
  - (b) that time is in the period for which the arrangement has effect.
- (2) In this section—
- “the initial transfer”, in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and
- “stock lending arrangement” has the meaning given by section 263B of TCGA 1992.
- (3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—
- (a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and
  - (b) the time when it becomes apparent that that transfer will not take place.

### *Special rules for discretionary trusts*

## **111 When payment to beneficiary treated as arising from foreign source**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that a payment is made by trustees of a settlement.
- (3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.
- (4) Condition C is that the income arising under the settlement includes taxed overseas income.
- (5) Condition D is that the trustees certify—
  - (a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and
  - (b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.
- (6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—

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- (a) from the certified source, and
  - (b) in the tax year in which the payment is made.
- (7) In this section “taxed overseas income”, in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

*Deduction for foreign tax where no credit allowed***112 Deduction from income for foreign tax (instead of credit against UK tax)**

- (1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—
- (a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or
  - (b) if subsection (2) applies, by the lesser amount mentioned in that subsection.
- (2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).
- [<sup>F34</sup>(2A) But if X is less than Y, an amount equal to the difference between X and Y must be subtracted from the amount by which any income of a person (“the relevant income”) is reduced under subsection (1)(a).
- (2B) In subsection (2A)—
- X is the amount of the relevant income that the person would (disregarding this section) be required to bring into account for income tax or corporation tax purposes, less any deduction that the person would be allowed to make for the amount paid in respect of non-UK tax, and
- Y is the amount of the relevant income (that is to say, the amount on which the amount in respect of non-UK tax is paid).]
- (3) If—
- (a) income of any person (“P”) is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and
  - (b) a payment is made by a tax authority to P, or any person connected with P, by reference to that tax,
- the amount of P's income is increased by the amount of the payment.
- (4) Subsection (1)—
- (a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),
  - (b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),
  - (c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and
  - (d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.

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- (5) Subsection (1) has effect for corporation tax purposes despite—
- (a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and
  - (b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).
- (6) In subsection (1) “non-UK tax” means tax under the law of a territory outside the United Kingdom.
- (7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

#### Textual Amendments

- F34** S. 112(2A)(2B) inserted (with effect in accordance with Sch. 11 para. 7(2) of the amending Act) by Finance Act 2010 (c. 13), **Sch. 11 para. 7(1)**

### 113 Deduction from capital gain for foreign tax (instead of credit against UK tax)

- (1) Subsection (2) applies to tax if it is—
- (a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and
  - (b) borne by the person making the disposal.
- (2) The tax is allowable as a deduction in the calculation of the gain.
- (3) Subsection (2) is subject to—
- (a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),
  - (b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and
  - (c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).
- (4) In subsection (1) “asset” and “disposal” have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

### 114 Time limits for action if tax adjustment makes reduction too large or too small

- (1) Subsection (2) applies to a claim or assessment if—
- (a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),
  - (b) the adjustment or increase gives rise to the claim or assessment, and
  - (c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.
- (2) No time-limit rule applies to the assessment or claim.
- (3) In subsection (1)(c) “material determination” means (as the case may be)—



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- (a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or
  - (b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).
- (4) In subsection (2) “time-limit rule” means anything—
- (a) in TMA 1970,
  - (b) in ICTA,
  - (c) in TCGA 1992, or
  - (d) in any other provision of the Tax Acts,
- limiting the time for the making of assessments or limiting the time for the making of claims for relief.

## **115 Duty to give notice that adjustment has rendered reduction too large**

- (1) This section applies if—
- (a) the amount of any of a person's income is reduced under section 112(1),
  - (b) that reduction (“the original reduction”) later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and
  - (c) the adjustment or increase is not a Lloyd's adjustment.
- (2) This section also applies if—
- (a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and
  - (b) that deduction (“the original reduction”) later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.
- (3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.
- (4) Notice under subsection (3) is to be given—
- (a) to an officer of Revenue and Customs, and
  - (b) within one year from when the adjustment or increase was made.
- (5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—

A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and

B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

- (6) In subsection (5) “the reduction period” means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.

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- (7) For the purposes of subsection (1)(c), the adjustment or increase is a “Lloyd’s adjustment” if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—
- (a) section 182(1) of FA 1993 (regulations about individual members of Lloyd’s), or
  - (b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd’s).
- (8) In subsection (2) “disposal” has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).
- (9) In this section so far as it relates to capital gains tax “notice” means notice in writing.

*European cross-border transfers of business*

**116 Introduction to section 117**

- (1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.
- (2) Condition A is that—
- (a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and
  - (b) the transfer includes—
    - (i) the transfer of an asset or liability representing a loan relationship,
    - (ii) the transfer of rights and liabilities under a derivative contract, or
    - (iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.
- (3) Condition B is that—
- (a) a company resident in the United Kingdom transfers part of its business to one or more companies,
  - (b) the part of the transferor’s business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,
  - (c) at least one transferee is resident in a member State other than the United Kingdom,
  - (d) the transferor continues to carry on a business after the transfer,
  - (e) the condition in subsection (2)(b) is met, and
  - (f) the transfer—
    - (i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or
    - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

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- (4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.
- (5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and
  - (c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.
- (6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—
- (a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—
    - (i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and
    - (ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,
  - (b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—
    - (i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and
    - (ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and
  - (c) only applies as respects the transfer so mentioned if—
    - (i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and
    - (ii) the transferor makes a claim under this section in respect of the transfer so mentioned.
- (7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).
- (8) For the purposes of this section, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and

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- (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

#### **117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets**

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—
  - (a) that, to the extent permitted by the law of the other member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and
  - (b) that any relief due to the transferor under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or
  - (b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—
  - (a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.
- (5) In subsection (4) “the appropriate applicant” means—
  - (a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and
  - (b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.
- (6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

#### *European cross-border mergers*

#### **118 Introduction to section 119**

- (1) Section 119 applies if each of conditions A to E is met and—
  - (a) in the case of a merger within subsection (2)(a) or (b), condition F is met,
  - (b) in the case of a merger within subsection (2)(c), conditions F and G are met, and
  - (c) in the case of a merger within subsection (2)(d), condition G is met.

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- (2) Condition A is that—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),
  - (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),
  - (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
  - (d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (3) Condition B is that each merging company is resident in a member State.
- (4) Condition C is that the merging companies are not all resident in the same State.
- (5) Condition D is that in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment (but see subsection (9)).
- (6) Condition E is that the transfer mentioned in subsection (5) includes—
- (a) the transfer of an asset or liability representing a loan relationship,
  - (b) the transfer of rights and liabilities under a derivative contract, or
  - (c) the transfer of intangible fixed assets—
    - (i) that are chargeable intangible assets in relation to company A immediately before the transfer, and
    - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.
- (7) Condition F is that—
- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
  - (b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.
- (8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).
- (9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).

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- (10) For the purposes of this section, a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (11) In this section—
- “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,
- “SE” and “SCE” have the same meaning as in CTA 2009 (see section 1319 of that Act),
- “the transferee” means—
- (a) in relation to a merger within subsection (2)(a), the SE,
  - (b) in relation to a merger within subsection (2)(b), the SCE, and
  - (c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and
- “transferor” means—
- (a) in relation to a merger within subsection (2)(a), a company merging to form the SE,
  - (b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and
  - (c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

## **119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets**

- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—
  - (a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and
  - (b) that any relief due to company A under that law is claimed.
- (3) Subsection (1) does not apply if—
  - (a) the merger is not effected for genuine commercial reasons, or
  - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (4) But subsection (3) does not prevent subsection (1) from applying if before the merger—
  - (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and

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- (b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.
- (5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.
- (6) In this section “company A”, “the merger” and “the merging companies” have the same meaning as in section 118.

### *Transparent entities involved in cross-border transfers and mergers*

## **120 Introduction to section 121**

- (1) Section 121 applies if, as a result of—
  - (a) a relevant loan relationship transaction,
  - (b) a relevant derivative contracts transaction, or
  - (c) a relevant intangible fixed assets transaction,tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.
- (2) In this section “relevant loan relationship transaction” means—
  - (a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 421(3)(c) or (4)(f) of that Act were met, and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger of a kind mentioned in section 431(2) of that Act which meets—
    - (i) conditions B to D in section 431,
    - (ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and
    - (iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,and in relation to which one or more of the merging companies is a transparent entity.
- (3) In this section “relevant derivative contracts transaction” means—
  - (a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—
    - (i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) the condition in section 674(2)(c) or (3)(f) of that Act were met, and in relation to which the transferor is a transparent entity, or
  - (b) a merger of a kind mentioned in section 682(2) of that Act which meets—
    - (i) conditions B to D in section 682,
    - (ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and

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- (iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,  
and in relation to which one or more of the merging companies is a transparent entity.
- (4) In this section “relevant intangible fixed assets transaction” means—
- (a) a transfer—
    - (i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and
    - (ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or
  - (b) a merger—
    - (i) which is of a kind mentioned in section 821(2) of that Act,
    - (ii) which meets conditions B and C in section 821,
    - (iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,
    - (iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,
    - (v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and
    - (vi) in relation to which one or more of the merging companies is a transparent entity.
- (5) In this section “relevant profit” means—
- (a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,
  - (b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,
  - (c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,
  - (d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,
  - (e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and



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- (f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.

- (6) In this section “transparent entity” means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

## 121 Tax treated as chargeable in respect of relevant transactions

- (1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.
- (2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—
  - (a) that, to the extent permitted by the law of the other member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and
  - (b) that any relief available under that law is claimed.
- (3) In this section “the relevant transfer” means—
  - (a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),
  - (b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or
  - (c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

*Cross-border transfers and mergers: chargeable gains*

## 122 Tax treated as chargeable in respect of gains on transfer of non-UK business

- (1) Subsection (3) applies if—
  - (a) section 140C or 140F of TCGA 1992 applies, and
  - (b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.
- (2) In this section—
  - “company A”—
    - (a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and
    - (b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,
  - “the host State” means the member State (other than the United Kingdom) mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,
  - “the transfer” means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and
  - “the transfer subsections” means—
    - (a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident “company” to one resident in another member State),
    - (b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident “company” to transferees including a “company” resident in another member State), and

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- (c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident “company” or co-operative society to one resident in another member State, as part of genuine merger of two or more “companies” or societies).
- (3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.
- (4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.
- (5) For the purposes of subsection (4) “the required basis” is that—
- (a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and
  - (b) any relief available to company A under the law of the host State has been duly claimed.

*Interpretation of sections related to the Mergers Directive*

### 123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

“company” means any entity listed as a company in [<sup>F35</sup>Part A of Annex I] to the Mergers Directive,

“derivative contract” has the same meaning as in Part 7 of CTA 2009,

“intangible fixed assets” and “chargeable intangible assets”, in relation to any person, have the same meaning as in Part 8 of CTA 2009,

“loan relationship” has the same meaning as in Part 5 of CTA 2009,

“the Mergers Directive” means Council Directive [<sup>F36</sup>2009/133/EC,]

“proceeds of realisation”, in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

“recognised for tax purposes” has the same meaning as in Part 8 of CTA 2009.

#### Textual Amendments

**F35** Words in s. 123 substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **5(a)**

**F36** Words in s. 123 substituted (1.7.2011) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2011 \(S.I. 2011/1431\)](#), regs. 1(2), **5(b)**

*Cases about being taxed otherwise than in accordance with double taxation arrangements*

### 124 Giving effect to solutions to cases and mutual agreements resolving cases

- (1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—
- (a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's

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- being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and
- (b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.
- (2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.
- (3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.
- (4) A claim for relief under any provision of—
- (a) the Tax Acts,
  - (b) the enactments relating to capital gains tax, or
  - (c) the enactments relating to petroleum revenue tax,
- may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

## **125 Effect of, and deadline for, presenting a case**

- (1) This section applies if double taxation arrangements include provision for a person to present a case—
- (a) to the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) to an officer of Revenue and Customs,
- concerning the person's being taxed otherwise than in accordance with the arrangements.
- (2) The presentation of any such case under and in accordance with the arrangements—
- (a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and
  - (b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.
- (3) Any such case must be presented before the end of—
- (a) the period of 6 years following the end of the chargeable period to which the case relates, or
  - (b) such longer period as may be specified in the arrangements.

### *The Arbitration Convention*

## **126 Meaning of “the Arbitration Convention”**

In sections 127 and 128 “the Arbitration Convention” means the Convention, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

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## **127 Giving effect to agreements, decisions and opinions under the Convention**

- (1) In this section “Convention determination” means—
- (a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
  - (b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.
- (2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.
- (3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.
- (4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.
- (5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

## **128 Disclosure under the Convention**

- (1) The obligation as to secrecy imposed by any enactment does not prevent—
- (a) the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) any authorised Revenue and Customs official,
- from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.
- (2) In this section “Revenue and Customs official” means any person who is or was—
- (a) a Commissioner for Her Majesty's Revenue and Customs,
  - (b) an officer of Revenue and Customs,
  - (c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
  - (d) a person acting on behalf of an officer of Revenue and Customs, or
  - (e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

### *Disclosure of information*

## **129 Disclosure where relief given overseas for tax paid in the United Kingdom**

- (1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—
- (a) income tax,
  - (b) corporation tax,
  - (c) capital gains tax, or

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- (d) petroleum revenue tax,  
relief from tax payable under that law.
- (2) The obligation as to secrecy imposed upon Revenue and Customs officials by—
  - (a) the Tax Acts,
  - (b) the enactments relating to capital gains tax, and
  - (c) the enactments relating to petroleum revenue tax,does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.
- (3) The reference in subsection (1) to tax payable under the law of the territory includes only—
  - (a) taxes which are charged on income and which correspond to income tax,
  - (b) taxes which are charged on income or chargeable gains and which correspond to corporation tax,
  - (c) taxes which are charged on capital gains and which correspond to capital gains tax, and
  - (d) taxes which—
    - (i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and
    - (ii) correspond to petroleum revenue tax.
- (4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue tax even though it—
  - (a) is payable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.
- (5) In this section “Revenue and Customs official” means any person who is or was—
  - (a) a Commissioner for Her Majesty's Revenue and Customs,
  - (b) an officer of Revenue and Customs,
  - (c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,
  - (d) a person acting on behalf of an officer of Revenue and Customs, or
  - (e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

#### *Interpretation of double taxation arrangements*

### **130 Interpreting provision about UK taxation of profits of foreign enterprises**

- (1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).
- (2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.
- (3) An enterprise is within this subsection if the enterprise—
  - (a) is resident outside the United Kingdom, or

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- (b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.
- (4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.
- (5) Subsection (4)—
  - (a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on share of firm's income despite any double taxation arrangements) applies to the income, and
  - (b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.
- (6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

### <sup>F37</sup> 130A Interpreting provision about UK taxation of pensions etc

- (1) Subsection (3) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).
- (2) The provision is that pensions and other similar remuneration which—
  - (a) arise outside the United Kingdom, and
  - (b) are paid to persons who are resident in the United Kingdom,
 are not to be subject to United Kingdom tax.
- (3) That provision does not prevent a pension or other similar remuneration of a person resident in the United Kingdom being chargeable to income tax if—
  - (a) the pension or other similar remuneration is paid out of sums or assets that were the subject of a relevant transfer or related sums or assets, and
  - (b) the relevant transfer or any transaction forming part of that transfer was, or formed part of, a tax avoidance scheme.
- (4) But nothing in subsection (3) prevents credit being allowed under Chapter 2 of this Part (double taxation relief by way of credit) against any tax so charged.
- (5) In determining whether a pension or other similar remuneration is paid out of sums or assets within subsection (3)(a), it is to be assumed that it is paid out of such sums or assets in priority to any other sums or assets.
- (6) A “relevant transfer”, in respect of any sums or assets, is a transaction or series of transactions as a result of which—
  - (a) the sums or assets are transferred out of a pension scheme, and
  - (b) the sums or assets or related sums or assets (or both) are transferred into the pension scheme under which the pension or other similar remuneration is paid.
- (7) A scheme is a “tax avoidance scheme” if the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure an income tax advantage for any person under this Part by virtue of provision mentioned in subsection (2) made by double taxation arrangements.

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- (8) For the purposes of subsection (7)—
- (a) “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions,
  - (b) it does not matter whether or not the double taxation arrangements were in existence at the time the tax avoidance scheme was entered into or given effect to, and
  - (c) “income tax advantage” is to be construed in accordance with section 572A(3) to (5) of ITA 2007.

- (9) In this section—

“pension” and “other similar remuneration” have the same meaning as in the Model Tax Convention on Income and on Capital published (from time to time) by the Organisation for Economic Co-operation and Development;

“pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150 of that Act);

“related sums or assets”, in relation to other sums or assets (“the original sums or assets”), means sums or assets which arise, or (directly or indirectly) derive, from the original sums or assets or from sums or assets which so arise or derive.]

#### Textual Amendments

- F37** S. 130A inserted (with effect in accordance with s. 72(2) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 72\(1\)](#)

### 131 Interpreting provision about interest influenced by special relationship

- (1) Subsections (3) and (6) apply if double taxation arrangements—
- (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—
- (a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the loan would have been made at all in the absence of the special relationship,
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.

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- (4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).
- (5) If—
- (a) a company (“L”) makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of L's business to make loans generally,
- the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).
- (6) The special relationship rule is to be read as requiring the taxpayer—
- (a) to show that there is no special relationship, or
  - (b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

### **132 Interpreting provision about royalties influenced by special relationship**

- (1) Subsection (3) and section 133 apply if double taxation arrangements—
- (a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and
  - (b) contain a special relationship rule.
- (2) A “special relationship rule” is provision that—
- (a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount (“the ordinary amount”) that would have been paid in the absence of the relationship, and
  - (b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.
- (3) The special relationship rule is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,
  - (b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and
  - (c) if subsection (4) applies, the factors specified in subsection (5).
- (4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—
- (a) the person (“PR”) who is liable to pay the royalties,
  - (b) a person who is, or has at any time been, an associate of PR,
  - (c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or
  - (d) a person who is, or has at any time been, an associate of a person within paragraph (c).
- (5) The factors mentioned in subsection (3)(c) are—



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- (a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,
  - (b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and
  - (c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.
- (6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).
- (7) For the purposes of this section, a person (“A”) is an associate of another person (“B”) at a given time if—
- (a) A was directly or indirectly participating in the management, control or capital of B at that time, or
  - (b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.
- (8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

### **133 Special relationship rule for royalties: matters to be shown by taxpayer**

- (1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—
- (a) the absence of any special relationship, or
  - (b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.
- (2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.
- (3) The first of those requirements is—
- (a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and
  - (b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.
- (4) The second of those requirements is—
- (a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and
  - (b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.

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### *Assessments*

#### **134 Correcting assessments where relief is available**

- (1) Subsections (5) and (6) apply if—
  - (a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and
  - (b) condition A or B is met.
- (2) Subsections (5) and (6) also apply if—
  - (a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and
  - (b) condition A or B is met.
- (3) Condition A is that it appears that the assessment—
  - (a) to income tax or corporation tax made in respect of the income, or
  - (b) to corporation tax or capital gains tax made in respect of the gain,
 is not made in respect of the full amount of the income or gain.
- (4) Condition B is that it appears that the assessment—
  - (a) to income tax or corporation tax made in respect of the income, or
  - (b) to corporation tax or capital gains tax made in respect of the gain,
 is incorrect having regard to the credit, if any, to be given under the arrangements.
- (5) Assessments may be made that are necessary to ensure—
  - (a) that the full amount of the income or gain is assessed, and
  - (b) that the proper credit, if any, is given.
- (6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.
- (7) An officer of Revenue and Customs may make amendments—
  - (a) of assessments or determinations, or
  - (b) of decisions on claims,
 that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.

## **PART 3**

### DOUBLE TAXATION RELIEF FOR SPECIAL WITHHOLDING TAX

#### *Introductory*

#### **135 Relief under this Part: introductory**

- (1) This Part (except sections 144 and 145) applies for the purpose of giving relief from double taxation in respect of special withholding tax.
- (2) Relief under this Part—

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- (a) is given by set-off against income tax or capital gains tax, and
- (b) so far as it cannot be given by set-off against income tax or capital gains tax, is given by repayment.

### 136 Interpretation of Part

- (1) Subsections (2) to (7) have effect for the purposes of this Part.
- (2) “Double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (3) “International arrangements”, in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income—
  - (a) under the law of the United Kingdom, or
  - (b) under that law and the law of the territory.
- (4) “The Savings Directive” means Council Directive [2003/48/EC](#) of 3 June 2003 on taxation of savings income in the form of interest payments.
- (5) “Savings income”—
  - (a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression “interest payment” has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and
  - (b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned.
- (6) “Special withholding tax” means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—
  - (a) in the case of a member State, Article 11 of the Savings Directive (withholding tax to be levied in Belgium, Luxembourg and Austria for the period described in the Directive), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (7) In the application of this Part in relation to capital gains tax, expressions used in this Part and in TCGA 1992 have the same meaning in this Part as in TCGA 1992.

*Credit etc for special withholding tax*

### 137 Income tax credit etc for special withholding tax

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person—
  - (a) is liable to income tax for a tax year in respect of a payment of savings income, or
  - (b) would be liable to income tax for a tax year in respect of a payment of savings income but for any exemption or relief.

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- (3) Condition B is that special withholding tax is levied in respect of the payment.
- (4) Condition C is that the person is UK resident for the tax year.
- (5) On the making of a claim, income tax (“the deemed tax”) is to be treated as having been—
  - (a) paid by or on behalf of the person for the tax year, and
  - (b) deducted at source for the tax year for the purposes of the provisions listed in subsection (7).
- (6) The amount of the deemed tax is given by section 138.
- (7) The provisions mentioned in subsection (5)(b) are—
  - section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee's return),
  - section 9 of TMA 1970 (returns to include self-assessment),
  - section 59A of TMA 1970 (payments on account of income tax),
  - section 59B of TMA 1970 (payments of income tax and capital gains tax), and
  - section 824(3) of ICTA (repayment supplements: determination of relevant time).

### **138 Amount and application of the deemed tax under section 137**

- (1) For the purposes of section 137, the amount of the deemed tax is—
  - (a) the amount of the special withholding tax levied (see section 137(3)), less
  - (b) any amounts of that tax that are within subsection (2).
- (2) An amount of special withholding tax levied is within this subsection if—
  - (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 137(2).
- (3) Subsection (4) applies if the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (4) So far as it would not otherwise be the case—
  - (a) the excess is to be set against any capital gains tax for which the person is liable for that tax year, and
  - (b) the person is entitled to a repayment of income tax in respect of any remaining balance of the excess.

### **139 Capital gains tax credit etc for special withholding tax**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that a person makes a disposal of assets in a tax year.
- (3) Condition B is that if a chargeable gain were to accrue on the disposal—

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- (a) the gain would accrue to the person, and
  - (b) the person would be chargeable to capital gains tax in respect of the gain.
- (4) Condition C is that—
- (a) the consideration for the disposal consists of, or includes, an amount of savings income, and
  - (b) special withholding tax is levied in respect of the whole, or any part, of the consideration.
- (5) Condition D is that the person is resident in the United Kingdom for the tax year.
- (6) On the making of a claim, capital gains tax (“the deemed tax”) is to be—
- (a) treated as having been paid by or on behalf of the person for the tax year, and
  - (b) treated for the purposes of section 283(2) of TCGA 1992 (repayment supplements: determination of relevant time) as having been paid on the 31 January following the tax year.
- (7) The amount of the deemed tax is given by section 140.
- (8) For the purposes of subsection (3)(b), disregard—
- (a) any deductions that are to be made from the total amount referred to in section 2(2) of TCGA 1992 (deductions for allowable losses), and
  - (b) section 3 of TCGA 1992 (annual exempt amount).

#### **140 Provisions about the deemed tax under section 139**

- (1) For the purposes of section 139, the amount of the deemed tax is—
- (a) the amount of the special withholding tax levied (see section 139(4)(b)), less
  - (b) any amounts of that tax that are within subsection (2) or (3).
- (2) An amount of special withholding tax levied is within this subsection if—
- (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 139(2).
- (3) An amount of special withholding tax levied is within this subsection if by reference to that amount of that tax—
- (a) there is that amount of deemed tax under section 137(5), or
  - (b) there would be that amount of deemed tax under section 137(5) on the making of a claim.
- (4) Subsection (5) applies if the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (5) So far as it would not otherwise be the case—
- (a) the excess is to be set against any income tax for which the person is liable for that tax year, and
  - (b) the person is entitled to a repayment of capital gains tax in respect of any remaining balance of the excess.

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- (6) For the purposes of the provisions listed in subsection (7) in relation to the person for that tax year, references in those provisions to income tax deducted at source for that tax year include the deemed tax.
- (7) Those provisions are—
- section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee's return),
  - section 9 of TMA 1970 (returns to include self-assessment), and
  - section 59B of TMA 1970 (payments of income tax and capital gains tax).

#### **141 Credit under Chapter 2 of Part 2 to be allowed first**

- (1) Any credit for foreign tax allowed under Chapter 2 of Part 2 against income tax or capital gains tax is to be allowed before effect is given to sections 137 to 140.
- (2) In this section “foreign tax” has the same meaning as in that Chapter (see section 21).

*Calculation of income or gain on remittance basis where special withholding tax levied*

#### **142 Conditions for purposes of section 143**

- (1) This section applies for the purposes of section 143.
- (2) Condition A is that—
- (a) a person is liable to income tax in respect of a payment of savings income, or
  - (b) a chargeable gain accrues to a person on a disposal by the person of assets in circumstances where the consideration for the disposal consists of, or includes, an amount of savings income.
- (3) Condition B is that special withholding tax is levied in respect of—
- (a) the payment of savings income, or
  - (b) the whole or any part of the consideration for the disposal.
- (4) Condition C is that a claim under this Part has been made in respect of the special withholding tax.
- (5) Condition D is that no credit for foreign tax in respect of the savings income or chargeable gain concerned is allowed under Chapter 2 of Part 2 (so that sections 31(2) and 32(2), which make provision similar to section 143, do not apply).

#### **143 Taking account of special withholding tax in calculating income or gains**

- (1) Subsection (2) applies if—
- (a) each of conditions A to D of section 142 is met, and
  - (b) income tax is payable by reference to the amount of the savings income received in the United Kingdom.
- (2) For income tax purposes, the amount received is increased by the amount of special withholding tax—
- (a) levied in respect of it, and

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- (b) in respect of which a claim under this Part has been made.
- (3) Subsection (4) applies if—
- (a) each of conditions A to D of section 142 is met, and
  - (b) capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom.
- (4) For capital gains tax purposes, the amount received is increased by the amount given by—

$$S W T \times \frac{G U K}{G - S W T}$$

where—

SWT is the amount of special withholding tax—

- (a) levied in respect of the whole or the part of the consideration for the disposal, and
  - (b) in respect of which a claim has been made under this Part,
- GUK is the amount of the chargeable gain received in the United Kingdom, and  
G is the amount of the chargeable gain accruing to the person on the disposal.

- (5) Subsection (6) applies if—
- (a) each of conditions A to D of section 142 is met, and
  - (b) neither subsection (2) nor subsection (4) applies.
- (6) In calculating—
- (a) the amount of the income for income tax purposes, or
  - (b) the amount of any chargeable gain for capital gains tax purposes,
- no deduction is to be made for special withholding tax in respect of which a claim has been made under this Part (whether special withholding tax in respect of the same, or any other, income or in respect of the same, or any other, chargeable gains).

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

- C3** S. 143 applied (with modifications) (coming into force in accordance with s. 218(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 36 para. 16\(6\)](#)

*Certificates to avoid levy of special withholding tax*

**144 Issue of certificate**

- (1) This section enables officers of Revenue and Customs to issue certificates to be used under the law of a territory outside the United Kingdom implementing—
- (a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to the paying agent a certificate drawn up by a competent authority in the beneficial owner's member State of residence for tax purposes), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

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- (2) If, on the written application of a person, an officer is satisfied that the applicant has provided an officer with—
- (a) the required information, and
  - (b) the documents (if any) required by an officer to verify that information,
- an officer must issue a certificate to the applicant.
- (3) In subsection (2) “the required information” means—
- (a) the applicant's name and address,
  - (b) the applicant's National Insurance number or, if the applicant does not have one, the applicant's date, town and country of birth,
  - (c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to payments of savings income,
  - (d) the name and address of the paying agent who is to make the payments of savings income to, or to secure the payments of savings income for, the applicant, and
  - (e) the period, not exceeding 3 years, for which the applicant would like the certificate to be valid.
- (4) A certificate under this section must be in writing and must state—
- (a) the information mentioned in subsection (3)(a) to (d), and
  - (b) the period of validity of the certificate (which must not exceed 3 years).
- (5) A certificate under this section must be issued no later than the end of the period of 2 months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).
- (6) If the requirements of—
- (a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and
  - (b) any corresponding provision of any international arrangements,
- differ to any extent, subsections (3) to (5) have effect, in their application in relation to the international arrangements, with such modifications as may be required because of those arrangements.

## **145 Refusal to issue certificate and appeal against refusal**

- (1) This section applies if, on an application for a certificate under section 144, an officer of Revenue and Customs (“the decision officer”) is not satisfied that the applicant has provided an officer with the information and documents required by or under section 144(2).
- (2) An officer must give written notice (“the refusal notice”) to the applicant of the decision officer's refusal to issue a certificate.
- (3) The refusal notice must specify the reasons for the refusal.
- (4) The applicant may by written notice (“the appeal notice”) appeal against the refusal.
- (5) The appeal notice must be given to an officer within 30 days of the date of the refusal notice.



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- (6) Part 5 of TMA 1970 (appeals and other proceedings) is to apply in relation to an appeal under this section.
- (7) On an appeal that is notified to the tribunal, the tribunal may—
- (a) confirm the refusal notice, or
  - (b) quash it and require an officer to issue a certificate.
- (8) In this section “the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

## PART 4

### TRANSFER PRICING

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

- C4** Pt. 4 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 2](#))
- C5** Pt. 4 excluded (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 2 para. 6\(2\)](#); S.I. 2011/2329, art. 3
- C6** Pt. 4 excluded (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, [Sch. 4 para. 3\(2\)](#); S.I. 2011/2576, art. 5
- C7** Pt. 4 excluded (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 129\(11\)](#) (with s. 147, [Sch. 17](#))

## CHAPTER 1

### BASIC TRANSFER-PRICING RULE

#### 146 Application of this Part

This Part applies for—

- (a) corporation tax purposes, and
- (b) income tax purposes.

#### 147 Tax calculations to be based on arm's length, not actual, provision

- (1) For the purposes of this section “the basic pre-condition” is that—
- (a) provision (“the actual provision”) has been made or imposed as between any two persons (“the affected persons”) by means of a transaction or series of transactions,
  - (b) the participation condition is met (see section 148),
  - (c) the actual provision is not within subsection (7) (oil transactions), and
  - (d) the actual provision differs from the provision (“the arm's length provision”) which would have been made as between independent enterprises.
- (2) Subsection (3) applies if—
- (a) the basic pre-condition is met, and

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- (b) the actual provision confers a potential advantage in relation to United Kingdom taxation on one of the affected persons.
- (3) The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (4) Subsection (5) applies if—
  - (a) the basic pre-condition is met, and
  - (b) the actual provision confers a potential advantage in relation to United Kingdom taxation (whether or not the same advantage) on each of the affected persons.
- (5) The profits and losses of each of the affected persons are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.
- (6) Subsections (3) and (5) have effect subject to—
  - (a) section 165 (exemption for dormant companies),
  - (b) section 166 (exemption for small and medium-sized enterprises),
  - (c) section 213 (this Part generally does not affect calculation of capital allowances),
  - (d) section 214 (this Part generally does not affect calculation of chargeable gains),
  - (e) section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for),<sup>F38</sup> ...
  - (f) section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for) [<sup>F39</sup>, and
  - (g) section 938N of CTA 2010 (this Part treated as of no effect for the purposes of Part 21B of CTA 2010 (group mismatch schemes)).]
- (7) The actual provision is within this subsection if it is made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of sections 225F to 225J of ITTOIA 2005 or any of sections 281 to 285 of CTA 2010 (transactions and deemed transactions involving oil treated as made at market value).

#### Textual Amendments

**F38** Word in s. 147(6)(e) omitted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)

**F39** S. 147(6)(g) and word inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(1\)](#)

## 148 The “participation condition”

- (1) For the purposes of section 147(1)(b), the participation condition is met if—
  - (a) condition A is met in relation to the actual provision so far as the actual provision is provision relating to financing arrangements, and
  - (b) condition B is met in relation to the actual provision so far as the actual provision is not provision relating to financing arrangements.

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- (2) Condition A is that, at the time of the making or imposition of the actual provision or within the period of six months beginning with the day on which the actual provision was made or imposed—
  - (a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (3) Condition B is that, at the time of the making or imposition of the actual provision—
  - (a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (4) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.
- (5) For the interpretation of subsections (2) and (3) see sections 157 to 163.

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

- C8** S. 148 applied by 2009 c. 4, s. 161(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 124\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C9** S. 148 applied by 2005 c. 5, s. 172F(2B) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 121\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C10** S. 148 applied by 2009 c. 4, s. 445(3A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 133\(8\)](#) (with [Sch. 9 paras. 1-9, 22](#)))
- C11** S. 148 applied by 2009 c. 4, s. 846(2A) (as inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 147\(6\)](#) (with [Sch. 9 paras. 1-9, 22](#)))

## **CHAPTER 2**

### **KEY INTERPRETATIVE PROVISIONS**

#### *Meaning of certain expressions that first appear in section 147*

#### **149 “Actual provision” and “affected persons”**

- (1) In this Part—
  - “the actual provision”, and
  - “the affected persons”,have the meaning given by section 147(1).
- (2) Subsection (1) does not apply if Chapters 1 and 3 to 6 apply in accordance with section 205(2) to (4) (oil-related ring-fence trades) but, in that event, in this Part—

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“the actual provision” means the provision mentioned in section 205(1)(b),  
and

“the affected persons” means the two persons mentioned in section 205(2).

(3) Subsections (1) and (2) are subject to subsection (4).

(4) If the participation condition (see section 148) would not be met but for section 161 or 162 (cases in which actual provision relates, to any extent, to financing arrangements), then in section 147(1)(d), (2)(b), (3), (4)(b) and (5) “the actual provision” is a reference to the actual provision so far as relating to the financing arrangements concerned.

## **150 “Transaction” and “series of transactions”**

(1) In this Part “transaction” includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are—

- (a) that there is no transaction in the series to which both those persons are parties,
- (b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and
- (c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

## **151 “Arm's length provision”**

(1) In this Part “the arm's length provision” has the meaning given by section 147(1).

(2) For the purposes of this Part, the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises include the case in which provision is made or imposed as between two persons but no provision would have been made as between independent enterprises; and references in this Part to the arm's length provision are to be read accordingly.

## **152 Arm's length provision where actual provision relates to securities**

(1) This section applies where—

- (a) both of the affected persons are companies, and
- (b) the actual provision is provision in relation to a security issued by one of those companies (“the issuing company”).

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- (2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the loan would have been made at all in the absence of the special relationship,
  - (b) the amount which the loan would have been in the absence of the special relationship, and
  - (c) the rate of interest and other terms which would have been agreed in the absence of the special relationship.
- (3) Subsection (2) has effect subject to subsections (4) and (5).
- (4) If—
- (a) a company (“L”) makes a loan to another company with which it has a special relationship, and
  - (b) it is not part of L's business to make loans generally,
- the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (2).
- (5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.
- (6) The matters are—
- (a) the appropriate level or extent of the issuing company's overall indebtedness,
  - (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—
    - (i) the issue of a security by the issuing company, or
    - (ii) the making of a loan, or a loan of a particular amount, to the issuing company, and
  - (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

### **153 Arm's length provision where security issued and guarantee given**

- (1) This section applies where the actual provision is made or imposed by means of a series of transactions which include—
- (a) the issuing of a security by a company which is one of the affected persons (“the issuing company”), and
  - (b) the provision of a guarantee by a company which is the other affected person.
- (2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—
- (a) the question whether the guarantee would have been provided at all in the absence of the special relationship,
  - (b) the amount that would have been guaranteed in the absence of the special relationship, and
  - (c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship.
- (3) Subsection (2) has effect subject to subsections (4) and (5).

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- (4) If—
- (a) a company (“G”) provides a guarantee in respect of another company with which it has a special relationship, and
  - (b) it is not part of G’s business to provide guarantees generally,
- the fact that it is not part of G’s business to provide guarantees generally is to be disregarded in applying subsection (2).
- (5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.
- (6) The matters are—
- (a) the appropriate level or extent of the issuing company’s overall indebtedness,
  - (b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—
    - (i) the issue of a security by the issuing company, or
    - (ii) the making of a loan, or a loan of a particular amount, to the issuing company, and
  - (c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

#### **154 Interpretation of sections 152 and 153**

- (1) Subsections (3) to (7) apply for the purposes of sections 152 and 153.
- (2) Subsection (6) applies also for the purposes of subsection (7)(a).
- (3) “Special relationship” means any relationship by virtue of which the participation condition is met (see section 148) in the case of the affected persons concerned.
- (4) Any reference to a guarantee includes—
- (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.
- (5) One company (“A”) has a “participatory relationship” with another (“B”) if—
- (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.
- (6) “Security” includes securities not creating or evidencing a charge on assets.
- (7) Any—
- (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced,

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is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

## **155 “Potential advantage” in relation to United Kingdom taxation**

- (1) Subsection (2) applies for the purposes of this Part.
- (2) The actual provision confers a potential advantage on a person in relation to United Kingdom taxation wherever, disregarding this Part, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of Effects A and B.
- (3) Effect A is that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of the person's profits for any chargeable period.
- (4) Effect B is that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of the person.
- (5) In determining for the purposes of subsection (3) or (4) the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a non-UK resident, there is to be left out of account any income of that person which is—
  - (a) disregarded income within the meaning given by section 813 of ITA 2007 (limits on liability to income tax of non-UK residents), or
  - (b) disregarded company income within the meaning given by section 816 of that Act.
- (6) For the purposes of subsections (2) to (4)—
  - (a) Part 7 (tax treatment of financing costs and income), and
  - (b) paragraph E of the list in section 1000(1) of CTA 2010 (excessive interest etc treated as a distribution),are to be disregarded.

## **156 “Losses” and “profits”**

- (1) In this Part “losses” includes amounts which are not losses but in respect of which relief may be given in accordance with—
  - (a) section 57 of ITTOIA 2005 (pre-trading expenses),
  - (b) section 88 of ITA 2007 (carry forward of certain interest),
  - (c) section 61 of CTA 2009 (pre-trading expenses),
  - (d) sections 387 to 391 of CTA 2009 (insurance companies: non-trading deficits on loan relationships),
  - (e) Chapter 16 of Part 5 of CTA 2009 (non-trading deficits on loan relationships),
  - (f) section 1223 of CTA 2009 (excess of management expenses), or
  - (g) Part 5 of CTA 2010 (group relief).
- (2) In this Part “profits” includes income.

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*“Direct participation” in management, control or capital of a person*

**157 Direct participation**

- (1) Subsection (2) applies for the purposes of—
  - (a) this Part,
  - (b) in Part 2, section 132(7), and
  - (c) in Part 5, section 219(2).
- (2) A person is directly participating in the management, control or capital of another person at a particular time if (and only if) that other person is at that time—
  - (a) a body corporate or a firm, and
  - (b) controlled by the first person.

*“Indirect participation” in management, control or capital of a person*

**158 Indirect participation: defined by sections 159 to 162**

- (1) This section is about how to read the references, in this Part and in some other provisions of this Act, to indirect participation.
- (2) For the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 161 so provides.
- (3) For the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 162 so provides.
- (4) For the purposes of—
  - (a) sections 154(5) and 204(4),
  - (b) in Part 2, section 132(7), and
  - (c) in Part 5, section 219(2),
 a person is indirectly participating in the management, control or capital of another person only if section 159 or 160 so provides.

**159 Indirect participation: potential direct participant**

- (1) Subsection (2) applies for the purposes of—
  - (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
  - (b) in Part 2, section 132(7), and
  - (c) in Part 5, section 219(2).
- (2) A person (“P”) is indirectly participating in the management, control or capital of another person (“A”) at a particular time if P would be directly participating in the management, control or capital of A at that time if the rights and powers attributed to P included all the rights and powers mentioned in subsection (3) that are not already attributed to P for the purpose of deciding under section 157 whether P is directly participating in the management, control or capital of A.
- (3) The rights and powers referred to in subsection (2) are—
  - (a) rights and powers which P is entitled to acquire at a future date,



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- (b) rights and powers which P will, at a future date, become entitled to acquire,
  - (c) rights and powers of persons other than P so far as they are rights or powers falling within subsection (4),
  - (d) rights and powers of any person with whom P is connected (see section 163), and
  - (e) rights and powers which would be attributed by subsection (2) to a person with whom P is connected were it being decided under that subsection whether that connected person is indirectly participating in the management, control or capital of A.
- (4) Rights and powers fall within this subsection so far as they—
- (a) are required, or may be required, to be exercised in any one or more of the following ways—
    - (i) on behalf of P,
    - (ii) under the direction of P, or
    - (iii) for the benefit of P, and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (5) In subsections (3)(c) to (e) and (4), the references to a person's rights and powers include references to any rights or powers which the person either—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (6) In paragraph (e) of subsection (3), the reference to rights and powers which would be attributed to a connected person includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to the connected person through a number of persons each of whom is connected with at least one of the others.
- (7) References in this section—
- (a) to rights and powers of a person, or
  - (b) to rights and powers which a person is or will become entitled to acquire,
- include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

## **160 Indirect participation: one of several major participants**

- (1) Subsection (2) applies for the purposes of—
- (a) sections 148(2) and (3), 154(5), 175(2) and 204(4),
  - (b) in Part 2, section 132(7), and
  - (c) in Part 5, section 219(2).
- (2) A person is indirectly participating in the management, control or capital of another person at a particular time if the first person is, at that time, one of a number of major participants in that other person's enterprise.
- (3) For the purposes of this section, a person (“A”) is a major participant in another person's enterprise at a particular time if at that time—
- (a) that other person (“the subordinate”) is a body corporate or firm, and

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- (b) the 40% test is met in the case of each of two persons—
  - (i) who, taken together, control the subordinate, and
  - (ii) of whom one is A.
- (4) For the purposes of this section, the 40% test is met in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.
- (5) For the purposes of this section—
  - (a) the question whether a person is controlled by any two or more persons taken together, and
  - (b) any question whether the 40% test is met in the case of a person who is one of two persons,
 is to be determined after attributing to each of the persons all the rights and powers which would be attributed by section 159(2) to a person were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of another person.
- (6) References in this section—
  - (a) to rights and powers of a person, or
  - (b) to rights and powers which a person is or will become entitled to acquire,
 include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

## **161 Indirect participation: sections 148 and 175: financing cases**

- (1) Subsection (2) applies for the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a).
- (2) A person (“P”) is indirectly participating in the management, control or capital of another (“A”) at the time of the making or imposition of the actual provision if—
  - (a) the actual provision relates, to any extent, to financing arrangements for A,
  - (b) A is a body corporate or firm,
  - (c) P and other persons acted together in relation to the financing arrangements, and
  - (d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c).
- (3) It is immaterial for the purposes of subsection (2)(c) whether P and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.
- (4) In subsection (2)(d) “relevant time” means—
  - (a) a time when P and the other persons were acting together in relation to the financing arrangements, or
  - (b) a time in the period of six months beginning with the day on which they ceased so to act.
- (5) In determining for the purposes of subsection (2)(d) whether P would be taken to have control of another person (“A”), the rights and powers of any person (and not

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just P) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.

- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

## **162 Indirect participation: sections 148 and 175: further financing cases**

- (1) Subsection (2) applies for the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b).
- (2) A person (“Q”) is indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—
- (a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons (“B”),
  - (b) B is a body corporate or firm,
  - (c) Q and other persons acted together in relation to the financing arrangements, and
  - (d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c).
- (3) It is immaterial for the purposes of subsection (2)(c) whether Q and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.
- (4) In subsection (2)(d) “relevant time” means—
- (a) a time when Q and the other persons were acting together in relation to the financing arrangements, or
  - (b) a time in the period of six months beginning with the day on which they ceased so to act.
- (5) In determining for the purposes of subsection (2)(d) whether Q would be taken to have control of another person (“A”), the rights and powers of any person (and not just Q) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.
- (6) In this section “financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

## **163 Meaning of “connected” in section 159**

- (1) Subsections (2) and (3) apply for the purposes of section 159 and this section.
- (2) Two persons are connected with each other if one of them is an individual and the other is—
- (a) the individual's spouse or civil partner,
  - (b) a relative of the individual,
  - (c) a relative of the individual's spouse or civil partner, or

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- (d) the spouse, or civil partner, of a person within paragraph (b) or (c).
- (3) Two persons are connected with each other if one of them is a trustee of a settlement and the other is—
  - (a) a person who in relation to that settlement is a settlor, or
  - (b) a person who is connected with a person within paragraph (a).
- (4) In this section—
  - “relative” means brother, sister, ancestor or lineal descendant, and
  - “settlement” and “settlor” have the same meaning as in section 620 of ITTOIA 2005.

#### *Application of OECD principles*

### **164 Part to be interpreted in accordance with OECD principles**

- (1) This Part is to be read in such manner as best secures consistency between—
  - (a) the effect given to sections 147(1)(a), (b) and (d) and (2) to (6), 148 and 151(2), and
  - (b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.
- (2) Subsection (1) has effect subject to—
  - section 147(1)(c) and (7) (oil-related provision to which Part does not apply),
  - sections 205 and 206 (rules for oil-related ring-fence trades),
  - section 217(3) to (7) (provision for sales of oil),
  - section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and
  - section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).
- (3) In this section “the OECD model” means—
  - (a) the rules which, at the passing of ICTA (which occurred on 9 February 1988), were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
  - (b) any rules in the same or equivalent terms.
- [<sup>F40</sup>(4) In this section “the transfer pricing guidelines” means—
  - (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations approved by the Organisation for Economic Co-operation and Development (OECD) on 22 July 2010, or
  - (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,
 including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated.]

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- (5) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

#### Textual Amendments

**F40** S. 164(4) substituted (with effect in accordance with s. 58(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 58\(1\)](#)

## CHAPTER 3

### EXEMPTIONS FROM BASIC RULE

#### 165 Exemption for dormant companies

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which meets the condition in subsection (2).
- (2) The condition is that—
- the company was dormant throughout the pre-qualifying period, and
  - apart from section 147, the company has continued to be dormant at all times since the end of the pre-qualifying period.
- (3) In subsection (2) “the pre-qualifying period” means—
- if there is an accounting period of the company that ends on 31 March 2004, that accounting period, or
  - if there is no such accounting period, the period of 3 months ending with that date.
- (4) In this section “dormant” has the meaning given by section 1169 of the Companies Act 2006.

#### 166 Exemption for small and medium-sized enterprises

- (1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see section 172).
- (2) Exceptions to subsection (1) are provided—
- in the case of a small enterprise, by <sup>F41</sup>sections 167 and 167A], and
  - in the case of a medium-sized enterprise, by sections 167 and 168.

#### Textual Amendments

**F41** Words in s. 166(2)(a) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 2 para. 3](#)

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

**167 Small and medium-sized enterprises: exceptions from exemption**

- (1) Subsections (2) and (3) set out exceptions to section 166(1).
- (2) The first exception is if the small or medium-sized enterprise elects for section 166(1) not to apply in relation to the chargeable period.  
Any such election is irrevocable.
- (3) The second exception is if—
  - (a) the other affected person, or
  - (b) a party to a relevant transaction,
 is, at the time when the actual provision is or was made or imposed, a resident of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).
- (4) For the purposes of subsection (3)—
  - (a) a “party to a relevant transaction” is a person who, if the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions, and
  - (b) “qualifying territory” and “non-qualifying territory” are defined in section 173.
- (5) In subsection (3) “resident”, in relation to a territory—
  - (a) means a person who, under the law of that territory, is liable to tax there by reason of the person's domicile, residence or place of management, but
  - (b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

**[<sup>F42</sup>167A Small enterprises: exception from exemption: transfer pricing notice**

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
  - (a) the potentially advantaged person is a small enterprise for the chargeable period,
  - (b) the person meets the condition in subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A person meets the condition referred to in subsection (1)(b) if—
  - (a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,

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- (b) the basic pre-condition in section 147 is met in respect of the provision, and
- (c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.

(3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.]

#### Textual Amendments

**F42** S. 167A inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 2 para. 4](#)

### 168 Medium-sized enterprises: exception from exemption: transfer pricing notice

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—
- (a) the potentially advantaged person is a medium-sized enterprise for the chargeable period, and
  - (b) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 542\(2\)](#), [1184\(1\)](#) (with [Sch. 2](#))

### 169 Giving of transfer pricing notices

- (1) This section applies to a transfer pricing notice given to a person.
- (2) The notice may be given in relation to—
- (a) any provision specified, or of a description specified, in the notice, or
  - (b) every provision in relation to which one or other of the assumptions in section 147(3) and (5) would, apart from section 166(1), be required to be made when calculating the person's profits and losses for tax purposes.
- (3) The notice may be given only after a notice of enquiry has been given to the person in relation to the person's tax return for the chargeable period concerned.
- (4) The notice must identify the officer of Revenue and Customs to whom any notice of appeal under section 170 is to be given.
- (5) In subsection (3) “notice of enquiry” means a notice under—
- (a) section 9A or 12AC of TMA 1970, or
  - (b) paragraph 24 of Schedule 18 to FA 1998.

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

### **170 Appeals against transfer pricing notices**

- (1) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only [<sup>F43</sup>on one of the following grounds—
  - (a) that the condition in section 167A(1)(b) is not met, or
  - (b) that the condition in section 168(1)(a) is not met.]
- (2) Any such appeal must be brought by giving written notice of appeal to the officer of Revenue and Customs identified in the notice in accordance with section 169(4).
- (3) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

#### **Textual Amendments**

**F43** Words in s. 170(1) substituted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 2 para. 5**

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **ss. 542(2), 1184(1)** (with Sch. 2)

### **171 Tax returns where transfer pricing notice given**

- (1) If a transfer pricing notice is given to a person (“T”), T may amend T’s tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—
  - (a) the day on which the notice is given, or
  - (b) if T appeals under section 170 against the decision to give the notice, the day on which the appeal is finally determined or abandoned.
- (2) If a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—
  - (a) the end of the period of 90 days specified in subsection (1), or
  - (b) the earlier amendment of the tax return for the purpose of complying with the notice.
- (3) So far as relating to any provision made or imposed by or in relation to a person—
  - (a) who is a [<sup>F44</sup>small or] medium-sized enterprise for a chargeable period,
  - (b) who does not make an election under section 167(2) for that period, and
  - (c) who is not excepted from section 166(1) in relation to that provision for that period because of section 167(3),
 the tax return required to be made for that period is a return that disregards section 147(3) and (5).



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- (4) Subsection (3) does not prevent a tax return for a period becoming incorrect if in the case of any provision made or imposed—
- (a) a transfer pricing notice is given which has effect in relation to that provision for that period,
  - (b) the return is not amended in accordance with subsection (1) for the purpose of complying with the notice, and
  - (c) the return ought to have been so amended.
- (5) In this section—
- “closure notice” means a notice under—
    - (a) section 28A or 28B of TMA 1970, or
    - (b) paragraph 32 of Schedule 18 to FA 1998,
  - “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule, and
  - “tax return” means—
    - (a) a return under section 8, 8A or 12AA of TMA 1970, or
    - (b) a company tax return.

#### Textual Amendments

**F44** Words in s. 171(3)(a) inserted (with effect in accordance with Sch. 2 paras. 7, 8 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 2 para. 6](#)

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

**C12** Ss. 166-171 excluded (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 542\(2\)](#), [1184\(1\)](#) (with [Sch. 2](#))

## 172 Meaning of “small enterprise” and “medium-sized enterprise”

- (1) In this Chapter—
- (a) “small enterprise” means a small enterprise as defined in the Annex, and
  - (b) “medium-sized enterprise” means an enterprise which—
    - (i) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and
    - (ii) is not a small enterprise as defined in the Annex.
- (2) For the purposes of subsection (1), the Annex has effect with the modifications set out in subsections (4) to (7).
- (3) In this section “the Annex” means the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (concerning the definition of micro, small and medium-sized businesses).
- (4) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether—
- (a) that enterprise, or
  - (b) any other enterprise (including that of the liquidator or administrator),

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is a small or medium-sized enterprise.

- (5) Article 3 of the Annex has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).
- (6) The first sentence of Article 4(1) of the Annex has effect as if the data to apply to—
- (a) the headcount of staff, and
  - (b) the financial amounts,
- were the data relating to the chargeable period referred to in section 166(1) (instead of the period described in that sentence) and calculated on an annual basis.
- (7) Article 4 of the Annex has effect with the omission of the following provisions—
- (a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts),
  - (b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods), and
  - (c) paragraph 3 (genuine estimate in case of newly established enterprise).

### **173 Meaning of “qualifying territory” and “non-qualifying territory”**

- (1) In section 167(3)—
- “non-qualifying territory” means any territory which is not a qualifying territory, and
- “qualifying territory” means—
- (a) the United Kingdom, or
  - (b) any territory in relation to which condition A or condition B is met.
- (2) Condition A is that—
- (a) double taxation arrangements have been made in relation to the territory,
  - (b) the arrangements include a non-discrimination provision, and
  - (c) the territory is not designated as a non-qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (3) Condition B is that—
- (a) double taxation arrangements have been made in relation to the territory, and
  - (b) the territory is designated as a qualifying territory for the purposes of this subsection in regulations made by the Treasury.
- (4) For the purposes of subsection (2)(b) a “non-discrimination provision”, in relation to any double taxation arrangements, is a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in any other contracting state to—
- (a) any taxation, or
  - (b) any requirement connected with taxation,
- which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (5) In subsection (4) “national”, in relation to a state, includes—
- (a) any individual possessing the nationality or citizenship of the state, and

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- (b) any legal person, partnership or association deriving its status as such from the law in force in that state.
- (6) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (7) Regulations under this section may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

## CHAPTER 4

### POSITION, IF ONLY ONE AFFECTED PERSON POTENTIALLY ADVANTAGED, OF OTHER AFFECTED PERSON

#### *Claim by affected person who is not advantaged*

#### **174 Claim by the affected person who is not potentially advantaged**

- (1) Subsection (2) applies if—
  - (a) only one of the affected persons (in this Chapter called “the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and
  - (b) the other affected person (in this Chapter called “the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (2) On the making of a claim by the disadvantaged person—
  - (a) the profits and losses of the disadvantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision, and
  - (b) despite any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments are to be made in the disadvantaged person's case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.
- (3) Provision about claims under this section is made by—
  - section 175 (claim not allowed in some cases where actual provision relates to a security issued by one of the affected persons),
  - section 176 (claim cannot be made unless advantaged person has made return on the basis that the arm's length provision applies),
  - section 177 (when claim may be made or amended), and
  - sections 181 to 184 (option to make claims in accordance with section 182 in some cases where actual provision relates to a security issued by one of the affected persons).
- (4) Subsection (2) has effect subject to—
  - section 180 (closing trading stock and closing work in progress in a trade),
  - sections 188 and 189 (effect of claims under this section on double taxation relief),

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Chapter 5 (provision, where liabilities of an affected person under securities issued by that person are guaranteed, for attribution to guarantor of things done by that affected person),

section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and

section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

## **175 Claims under section 174 where actual provision relates to a security**

- (1) A claim under section 174 may not be made if—
  - (a) the participation condition (see section 148) would not be satisfied but for section 161 or 162,
  - (b) the actual provision is provision in relation to a security issued by one of the affected persons (“the issuer”), and
  - (c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.
- (2) For the purposes of subsection (1), one person (“A”) has a “participatory relationship” with another (“B”) if—
  - (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.
- (3) In subsections (1)(b) and (4)(a) “security” includes securities not creating or evidencing a charge on assets.
- (4) For the purposes of subsection (1)(b), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced,
 is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.
- (5) The reference in subsection (1)(c) to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) if the issuer is a company, a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuer has a reasonable expectation that in the event of a default by the issuer the person will be paid by, or out of the assets of, one or more companies.

## **176 Claims under section 174: advantaged person must have made return**

- (1) A claim may not be made under section 174 unless a calculation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision.
- (2) A claim made under section 174 must be consistent with the calculation made on that basis in the case of the advantaged person.

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- (3) For the purposes of subsections (1) and (2), a calculation is to be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if (and only if)—
- (a) the calculations made for the purposes of any return by the advantaged person have been made on that basis because of this Part, or
  - (b) a relevant notice (see section 190) given to the advantaged person takes account of a determination in pursuance of this Part of an amount to be brought into account for tax purposes on that basis.

### **177 Time for making, or amending, claim under section 174**

- (1) A claim under section 174 can be made only in the period mentioned in subsection (2) or (3).
- (2) If a return has been made by the advantaged person on the basis mentioned in section 176(1), the period is the two years beginning with the day of the making of the return.
- (3) If a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) has been given to the advantaged person, the period is the two years beginning with the day on which that notice was given.
- (4) Subsection (5) applies if—
  - (a) a claim under section 174 is made in relation to a return made on the basis mentioned in section 176(1), and
  - (b) a relevant notice taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.
- (5) The disadvantaged person is entitled, within the period mentioned in subsection (3), to make any such amendment of the claim as may be appropriate in consequence of the determination contained in the relevant notice.
- (6) Subsections (1) and (5) have effect subject to section 186(3) (which provides for the extension of the period for making or amending a claim).

### **178 Meaning of “return” in sections 176 and 177**

- (1) In sections 176 and 177 “return” means—
  - (a) any return required to be made under TMA 1970 or under Schedule 18 to FA 1998 for income tax or corporation tax purposes, or
  - (b) any voluntary amendment of a return within paragraph (a).
- (2) In subsection (1)(b) “voluntary amendment” means—
  - (a) an amendment under section 9ZA or 12ABA of TMA 1970 (amendment of personal, trustee or partnership return by taxpayer), or
  - (b) an amendment under Schedule 18 to FA 1998 other than one made in response to the giving of a relevant notice (see section 190).

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*Claims: special cases*

**179 Compensating payment if advantaged person is controlled foreign company**

[<sup>F45</sup>(1) Subsection (2) applies if—

- (a) the actual provision is provision made or imposed in relation to a CFC,
- (b) for the purpose of determining the CFC's assumed taxable total profits for an accounting period, the CFC's profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,
- (c) in relation to the accounting period, sums are charged on chargeable companies at step 5 in section 371BC(1), and
- (d) in consequence of the application of section 147(3) or (5) as mentioned in paragraph (b), the total of those sums is more than it would otherwise be.]

(2) Sections 174 to 178 have effect as if the [<sup>F46</sup>CFC] were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In applying sections 174 to 178 in a case in which they apply because of subsection (2)

- (a) references to the advantaged person in sections 176(3)(a) and (b) and 177(2), (3) and (4)(b) include a reference to any of the [<sup>F47</sup>chargeable companies on which a sum is charged], and
- (b) references to corporation tax include a reference to [<sup>F48</sup>the CFC charge].

[<sup>F49</sup>(4) In this section terms which are defined in Part 9A have the same meaning as they have in that Part.

(5) For the purposes of subsections (1)(c) and (d) and (3)(a) assume that any claims made under Chapter 9 of Part 9A for the accounting period were not made.]

**Textual Amendments**

**F45** S. 179(1) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(2\)](#)

**F46** Words in s. 179(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(3\)](#)

**F47** Words in s. 179(3)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(4\)\(a\)](#)

**F48** Words in s. 179(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(4\)\(b\)](#)

**F49** S. 179(4)(5) substituted for s. 179(4) (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 20 para. 42\(5\)](#)

**180 Application of section 174(2)(a) in relation to transfers of trading stock etc**

(1) Section 174(2)(a) does not affect the credits to be brought into account by the disadvantaged person in respect of—

- (a) closing trading stock, or
- (b) closing work in progress in a trade,

for accounting periods ending on or after the day given by subsection (2).

(2) That day is the last day of the accounting period of the advantaged person in which the actual provision was made or imposed.

(3) For the purposes of this section “trading stock”, in relation to any trade, has the meaning given by—

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- (a) section 174 of ITTOIA 2005, or
- (b) section 163 of CTA 2009.

*Alternative way of claiming if a security is involved*

## **181 Section 182 applies to claims where actual provision relates to a security**

- (1) Subsection (2) applies if—
  - (a) both of the affected persons are companies, and
  - (b) the actual provision is provision in relation to a security issued by one of those companies.
- (2) A claim under section 174 may be made in accordance with section 182.
- (3) For the purposes of this Part, a “section 182 claim” is a claim under section 174 made in accordance with section 182.
- (4) In subsections (1)(b) and (5)(a) “security” includes securities not creating or evidencing a charge on assets.
- (5) For the purposes of subsection (1)(b), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

## **182 Making of section 182 claims**

- (1) A section 182 claim may be made by—
  - (a) the disadvantaged person, or
  - (b) the advantaged person.
- (2) A section 182 claim made by the advantaged person is to be taken to be made on behalf of the disadvantaged person.
- (3) A section 182 claim may be made before or after a calculation within section 176(1) has been made.
- (4) A section 182 claim must be made either—
  - (a) at any time before the end of the period mentioned in section 177(2), or
  - (b) within the period mentioned in section 177(3).
- (5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making a claim).

## **183 Giving effect to section 182 claims**

- (1) A section 182 claim is not a claim within paragraph 57 or 58 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters).
- (2) Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to TMA 1970) has effect in relation to a section 182 claim.

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- (3) If—
- (a) a section 182 claim is made before a calculation within section 176(1) has been made,
  - (b) such a calculation is subsequently made, and
  - (c) the claim is not consistent with the calculation,
- the affected persons are to be treated as if (instead of the claim actually made) a claim had been made that was consistent with the calculation.
- (4) All such adjustments are to be made (including by the making of assessments) as are required to give effect to subsection (3).
- (5) Subsection (4) has effect despite any limit on the time within which any adjustment may be made.

#### **184 Amending a section 182 claim if it is followed by relevant notice**

- (1) Subsection (2) applies if—
- (a) a section 182 claim is made,
  - (b) a return is subsequently made by the advantaged person on the basis mentioned in section 176(1), and
  - (c) a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.
- (2) If any amendment of the claim is appropriate in consequence of the determination contained in the relevant notice, the amendment may be made by—
- (a) the disadvantaged person, or
  - (b) the advantaged person.
- (3) If an amendment under subsection (2) is made by the advantaged person it is to be taken to be made on behalf of the disadvantaged person.
- (4) Any amendment under subsection (2) must be made within the period mentioned in section 177(3).
- (5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making an amendment).

*Notification to persons who may be disadvantaged*

#### **185 Notice to potential claimants**

- (1) Subsection (2) applies if—
- (a) a relevant notice (see section 190) is given to any person,
  - (b) the notice, or anything contained in it, takes account of a transfer-pricing determination, and
  - (c) it appears to an officer that there is a person (“DP”) who is or may be a disadvantaged person by reference to the subject-matter of the determination.
- (2) The officer must give to DP a notice containing particulars of the determination.
- (3) A contravention of subsection (2) does not affect the validity—



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- (a) of the relevant notice, or
  - (b) of any determination to which the notice relates.
- (4) For the purposes of this section, a person is a disadvantaged person by reference to the subject-matter of a transfer-pricing determination if (and only if) the person—
- (a) is entitled, in consequence of the making of the determination, to make or amend a claim under section 174, or
  - (b) will be entitled, because of section 212(3), to be a party to any proceedings on an appeal relating to the determination.
- (5) In this section—
- “officer” means officer of Revenue and Customs, and
  - “transfer-pricing determination” means a determination of an amount that is to be brought into account for tax purposes in respect of—
    - (a) any assumption made under section 147(3) or (5), or
    - (b) any advance-pricing-agreement assumptions (see section 222(6)).

## **186 Extending claim period if notice under section 185 not given or given late**

- (1) If there is a contravention of section 185(2), the Commissioners must consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim under section 174.
- (2) Subsection (3) applies if—
  - (a) there is a contravention of section 185(2), or
  - (b) a notice required by section 185(2) is given after the relevant notice concerned.
- (3) The Commissioners may, if they think fit, treat the period for the making or amendment of a claim under section 174 in the case concerned as extended by such further period as appears to them to be appropriate.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

### *Treatment of interest where claim made*

## **187 Tax treatment if actual interest exceeds arm's length interest**

- (1) Subsection (6) applies if the following conditions are met.
- (2) Condition A is that interest is paid by any person under the actual provision.
- (3) Condition B is that section 147(3) or (5) applies in relation to the actual provision.
- (4) Condition C is—
  - (a) that the amount (“ALINT”) of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision, or
  - (b) that there would not have been any interest payable under the arm's length provision (so that ALINT is nil).
- (5) Condition D is that the person receiving the interest paid under the actual provision makes—

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- (a) a claim under section 174, or
  - (b) a section 182 claim.
- (6) The interest paid under the actual provision, so far as it exceeds ALINT—
- (a) is not to be regarded as chargeable under Chapter 2 of Part 4 of ITTOIA 2005,
  - (b) is not subject to the provisions of Part 15 of ITA 2007 (deduction of income tax at source), and
  - (c) is not required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit.

*Adjustment of double taxation relief where claim made*

**188 Double taxation relief by way of credit for foreign tax**

- (1) Subsection (2) applies if—
- (a) a claim is made under section 174, and
  - (b) the disadvantaged person (“DP”) is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm’s length provision was made or imposed instead of the actual provision.
- (2) Assumptions A and B are to be made in DP’s case in relation to any credit for foreign tax which DP has been, or may be, given—
- (a) under any double taxation arrangements, or
  - (b) under section 18(1)(b) and (2) (relief under unilateral relief arrangements).
- (3) Subsection (2) has effect subject to section 189(2).
- (4) Assumption A is that the foreign tax paid or payable by DP does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm’s length provision had been made or imposed instead of the actual provision.
- (5) Assumption B is that the amount of DP’s relevant profits in respect of which DP is given credit for foreign tax does not include the amount (if any) by which DP’s relevant profits are treated as reduced in accordance with section 174.
- (6) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—
- (a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP’s claim under section 174, and
  - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.
- (7) In subsection (5) “DP’s relevant profits” means the profits arising to DP from the carrying on of the relevant activities (see section 216).
- (8) In this section—
- “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom), and
  - “foreign tax” means—

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- (a) any tax under the law of a territory outside the United Kingdom, or
  - (b) any amount that, for the purposes of any double taxation arrangements, is to be treated as if it were tax under the law of a territory outside the United Kingdom.
- (9) In determining for the purposes of this section whether a person is—
- (a) under any double taxation arrangements, or
  - (b) under section 18(1)(b) and (2),
- to be given credit for foreign tax, ignore any requirement that a claim is made before such a credit is given.

## **189 Double taxation relief by way of deduction for foreign tax**

- (1) Subsection (2) applies if—
- (a) a claim is made under section 174,
  - (b) the disadvantaged person (“DP”) is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm’s length provision was made or imposed instead of the actual provision,
  - (c) the application of that basis in the calculation of DP’s profits or losses for any chargeable period involves a reduction in the amount of any income, and
  - (d) that income is also income that is to be reduced in accordance with section 112(1) (deduction for foreign tax where no credit allowed).
- (2) If this subsection applies—
- (a) the reduction mentioned in subsection (1)(c) is to be treated as made before any reduction under section 112(1), and
  - (b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in subsection (1)(c) is to be disregarded for the purposes of section 112(1).
- (3) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—
- (a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP’s claim under section 174, and
  - (b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

### *Interpretation of Chapter*

## **190 Meaning of “relevant notice”**

In this Chapter “relevant notice” means—

- (a) a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,
- (b) a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,
- (c) a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,
- (d) a notice under section 30B(1) of TMA 1970 amending a partnership return,

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- (e) a notice of an assessment under section 29 of TMA 1970,
- (f) a notice of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), or
- (g) a notice of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

## CHAPTER 5

### POSITION OF GUARANTOR OF AFFECTED PERSON'S LIABILITIES UNDER A SECURITY ISSUED BY THE PERSON

#### 191 When sections 192 to 194 apply

- (1) Sections 192 to 194 apply if—
  - (a) one of the affected persons (“the issuing company”) is a company that has liabilities under a security issued by it,
  - (b) those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”),
  - (c) in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5), and
  - (d) that reduction is required because of section 153.
- (2) In subsections (1)(a) and (3)(a) “security” includes securities not creating or evidencing a charge on assets.
- (3) For the purposes of subsection (1)(a), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (1)(a) to a security is to be read accordingly.
- (4) In subsection (1)(b) the reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.
- (5) In this Chapter—
  - “the guarantor company” has the meaning given by subsection (1)(b),
  - “the issuing company” has the meaning given by subsection (1)(a), and
  - “the security” means the security mentioned in subsection (1)(a).

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## **192 Attribution to guarantor company of things done by issuing company**

- (1) On the making of a claim, the guarantor company is, to the extent of the reduction mentioned in section 191(1)(c), to be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—
  - (a) had issued the security,
  - (b) owed the liabilities under it, and
  - (c) had paid any interest or other amounts paid under it by the issuing company.
- (2) Subsection (1) is subject to subsection (3).
- (3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person), TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies because of subsection (1), and

TR is the total amount of the reductions within section 191(1)(c).
- (4) Provision about claims under subsection (1) is made by—

section 193 (interaction between claims under subsection (1) and claims under section 174), and

section 194 (general provision about claims under subsection (1)).
- (5) In subsection (1) “the Taxes Acts” has the meaning given by section 118(1) of TMA 1970.
- (6) In subsection (3) any reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

## **193 Interaction between claims under sections 174 and 192(1)**

- (1) In this section “the loan provision” means the actual provision made or imposed between—
  - (a) the issuing company, and
  - (b) another company (“the lending company”),which is provision in relation to the security.
- (2) Subsections (3) and (4) apply if—
  - (a) the guarantor company makes a claim under section 192(1), and
  - (b) the lending company makes a claim under section 174 in relation to the loan provision.
- (3) In determining the arm's length provision for the purposes of section 174(2)(a) in relation to the lending company's claim, additional amounts are to be brought into account as credits corresponding to the debits that fall to be brought into account by the guarantor company because of section 192(1).
- (4) If—

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- (a) the lending company makes its claim under section 174 before the guarantor company makes its claim under section 192(1), and
  - (b) the calculation on which the lending company's claim is based does not comply with subsection (3),
- the guarantor company's claim is to be disallowed.

#### **194 Claims under section 192(1): general provisions**

- (1) A claim under section 192(1) may be made—
  - (a) by the guarantor company,
  - (b) if there are two or more guarantor companies, by those companies acting together, or
  - (c) by the issuing company.
- (2) A claim made under section 192(1) by the issuing company is to be taken to be made on behalf of the guarantor company or companies.
- (3) Sections 175 to 177 apply in relation to a claim under section 192(1) made by or on behalf of any person or persons as they apply in relation to a claim under section 174 made by the disadvantaged person, but taking—
  - (a) references in sections 176 and 177 to the advantaged person as references to the issuing company, and
  - (b) the reference in section 177 to the disadvantaged person as a reference to the guarantor company or companies.

## **CHAPTER 6**

### BALANCING PAYMENTS

#### **195 Qualifying conditions for purposes of section 196**

- (1) Conditions A to D are “the qualifying conditions” for the purposes of section 196.
- (2) Condition A is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.
- (3) Condition B is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (4) Condition C is that—
  - (a) a payment (the “balancing payment”) is made, or
  - (b) two or more payments (the “balancing payments”) are made, to the advantaged person by the disadvantaged person.
- (5) Condition D is that the sole or main reason for making that payment or those payments is that section 147(3) or (5) applies.

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## **196 Balancing payments between affected persons: no charge to, or relief from, tax**

- (1) If each of the qualifying conditions (see section 195) is met, subsection (2) applies—
  - (a) to the balancing payment if, or so far as, its amount does not exceed the available compensating adjustment, or
  - (b) to the balancing payments if, or so far as, their total amount does not exceed the available compensating adjustment.
- (2) Any payment to which this subsection applies—
  - (a) is not to be taken into account in calculating profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and
  - (b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.
- (3) In subsection (1) “the available compensating adjustment” means the difference between PL1 and PL2 where—
  - PL1 is the profits and losses of the disadvantaged person calculated for tax purposes on the basis of the actual provision, and
  - PL2 is the profits and losses of the disadvantaged person as (or as they would be) calculated for tax purposes on a claim under section 174.
- (4) For the purposes of subsection (3), take PL1 or PL2—
  - (a) as a positive amount if it is an amount of profits, and
  - (b) as a negative amount if it is an amount of losses.
- (5) In this section, the following expressions have the meaning given by section 195—
  - “the balancing payment” and “the balancing payments”, and
  - “the disadvantaged person”.

## **197 Qualifying conditions for purposes of section 198**

- (1) Conditions A to F are the qualifying conditions for the purposes of section 198.
- (2) Condition A is that one of the affected persons (“the issuing company”) is a company that has liabilities under a security issued by it.
- (3) Condition B is that those liabilities are to any extent the subject of a guarantee provided by a company (“the guarantor company”).
- (4) Condition C is that, in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5).
- (5) Condition D is that that reduction is required because of section 153.
- (6) Condition E is that—
  - (a) a payment (the “balancing payment”) is made, or
  - (b) two or more payments (the “balancing payments”) are made, by the guarantor company to the issuing company.
- (7) Condition F is that the sole or main reasons for making that payment or those payments are—
  - (a) that section 147(3) or (5) applies because of section 153, or

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- (b) that sections 192 to 194 apply.
- (8) In subsections (2) and (9)(a) “security” includes securities not creating or evidencing a charge on assets.
- (9) For the purposes of subsection (2), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (2) to a security is to be read accordingly.
- (10) In subsection (3) the reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

#### **198 Balancing payments by guarantor to issuer: no charge to, or relief from, tax**

- (1) If each of the qualifying conditions (see section 197) is met, subsection (2) applies to the balancing payments made by all of the guarantor companies if, or so far as, the total amount of those payments does not exceed the total amount of the reductions within section 197(4).
- (2) Payments to which this subsection applies—
  - (a) are not to be taken into account in calculating for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and
  - (b) are not for any purpose of the Corporation Tax Acts to be regarded as distributions.
- (3) In this section, the following expressions have the meaning given by section 197—
  - “the balancing payments”,
  - “the guarantor company”, and
  - “the issuing company”.

#### **199 Pre-conditions for making election under section 200**

- (1) Conditions A to E are the pre-conditions for the purposes of section 200.
- (2) Condition A is that both of the affected persons are companies.
- (3) Condition B is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.
- (4) Condition C is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).



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- (5) Condition D is that the actual provision is provision in relation to a security (the “relevant security”).
- (6) Condition E is that the capital market condition is met (see section 204).
- (7) In subsections (5) and (8)(a) “security” includes securities not creating or evidencing a charge on assets.
- (8) For the purposes of subsection (5), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.

## **200 Election to pay tax rather than make balancing payments**

- (1) If each of the pre-conditions (see section 199) is met, the disadvantaged person may make an election—
  - (a) to make no balancing payment within section 196 to the advantaged person in connection with section 147(3) or (5) applying because of section 152 in relation to the relevant security in a chargeable period, but
  - (b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 152 in relation to the relevant security.
- (2) Section 203 contains provision about the making and effect of elections under this section.
- (3) In this section, the following expressions have the meaning given by section 199—
  - “the advantaged person”,
  - “the disadvantaged person”, and
  - “the relevant security”.

## **201 Pre-conditions for making election under section 202**

- (1) Conditions A to E are the pre-conditions for the purposes of section 202.
- (2) Condition A is that both of the affected persons are companies.
- (3) Condition B is that only one of the affected persons (“the advantaged person”) is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.
- (4) Condition C is that the other affected person (“the disadvantaged person”) is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (5) Condition D is that the actual provision is made or imposed by means of a series of transactions which include—
  - (a) the issuing of a security (“the relevant security”) by one of the affected persons (“the issuing company”), and
  - (b) the provision of a guarantee by the other affected person.

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- (6) Condition E is that the capital market condition is met (see section 204).
- (7) In subsections (5) and (8)(a) “security” includes securities not creating or evidencing a charge on assets.
- (8) For the purposes of subsection (5), any—
  - (a) interest payable by a company on money advanced without the issue of a security for the advance, or
  - (b) other consideration given by a company for the use of money so advanced, is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.
- (9) In subsection (5) the reference to a guarantee includes—
  - (a) a reference to a surety, and
  - (b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

## **202 Election, in guarantee case, to pay tax rather than make balancing payments**

- (1) If each of the pre-conditions (see section 201) is met, the disadvantaged person may make an election—
  - (a) to make no balancing payment within section 198 to the advantaged person in connection with section 147(3) or (5) applying because of section 153 in relation to the relevant security in a chargeable period, but
  - (b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 153 in relation to the relevant security.
- (2) Section 203 contains provision about the making and effect of elections under this section.
- (3) In this section, the following expressions have the meaning given by section 201—
  - “the advantaged person”,
  - “the disadvantaged person”, and
  - “the relevant security”.

## **203 Elections under section 200 or 202**

- (1) In this section “election” means election under section 200 or 202.
- (2) An election must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued.
- (3) An election is irrevocable.
- (4) An election has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods.

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- (5) An election is of no effect if the Commissioners for Her Majesty's Revenue and Customs give the disadvantaged person a notice refusing to accept the election.
- (6) A notice under subsection (5) may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.
- (Paragraph 24 of Schedule 18 to FA 1998 makes provision about notices of enquiry in respect of company tax returns.)
- (7) If an election has effect in relation to an accounting period of the advantaged person, the tax mentioned in subsection (1)(b) of the section under which the election is made—
- (a) is recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and
  - (b) is not recoverable from the advantaged person.
- (8) In this section—
- “the advantaged person”, “the disadvantaged person” and “the relevant security”—
- (a) in relation to an election under section 200, have the meaning given by section 199, and
  - (b) in relation to an election under section 202, have the meaning given by section 201, and
- “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.
- (9) For the purposes of subsections (2) and (4), if the relevant security was issued in a chargeable period beginning before 1st April 2004 it is to be treated as if it had been issued in the chargeable period beginning on that date.

## **204 Meaning of “capital market condition” in sections 199 and 201**

- (1) For the purposes of section 199(6) or 201(6), the capital market condition is met if—
- (a) the actual provision forms part of a capital market arrangement,
  - (b) the capital market arrangement involves the issue of a capital market investment,
  - (c) the securities that represent the capital market investment are issued wholly or mainly to independent persons, and
  - (d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.
- (2) In this section—
- “capital market arrangement” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act),
- “capital market investment” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act), and
- “independent person” means a person—
- (a) who is not the disadvantaged person, and

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- (b) who does not have a participatory relationship with either of the affected persons.
- (3) In subsection (2) “the disadvantaged person” —
  - (a) for the purposes of the application of this section in relation to section 199(6) has the meaning given by section 199(4), and
  - (b) for the purposes of the application of this section in relation to section 201(6) has the meaning given by section 201(4).
- (4) For the purposes of subsection (2), a person (“A”) who is a company has a “participatory relationship” with one of the affected persons (“B”) if—
  - (a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

## CHAPTER 7

### OIL-RELATED RING-FENCE TRADES

#### **205 Provision made or imposed between ring-fence trade and other activities**

- (1) Subsections (2) to (4) apply if—
  - (a) a person carries on an oil-related ring-fence trade (see section 206), and
  - (b) any provision is made or imposed by the person as between—
    - (i) the oil-related ring-fence trade, and
    - (ii) any other activities carried on by the person.
- (2) Chapters 1 and 3 to 6 (read in accordance with Chapters 2 and 8) apply in relation to the provision as if—
  - (a) the oil-related ring-fence trade, and the person's other activities, were carried on by two different persons,
  - (b) the provision were made or imposed as between those two persons by means of a transaction,
  - (c) those two persons were both controlled by the same person at the time when the provision was made or imposed, and
  - (d) a potential advantage in relation to United Kingdom taxation were conferred by the provision on each of those two persons.
- (3) Subsection (2) has effect subject to subsection (4).
- (4) Chapters 1 and 3 to 6 apply in relation to the provision only if the effect of their applying is—
  - (a) that a larger amount is taken for tax purposes to be the amount of the profits of the oil-related ring-fence trade for any chargeable period, or
  - (b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of the oil-related ring-fence trade.
- (5) In subsection (4)(a), the reference to a larger amount includes, if there would not otherwise have been profits, an amount of more than nil.

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## **206 Meaning of “oil-related ring-fence trade” in sections 205 and 218**

- (1) This section has effect for the interpretation of—
  - (a) section 205, and
  - (b) in Part 5, section 218(2)(f).
- (2) Activities carried on by a person are an “oil-related ring-fence trade” carried on by that person if subsection (3) or (4) applies to the activities.
- (3) This subsection applies to the activities if—
  - (a) they are carried on by the person as part of a trade, and
  - (b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 (oil-related activities), they are treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.
- (4) This subsection applies to the activities if—
  - (a) they are carried on by the person as a trade, and
  - (b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 they would, if the person did carry on any other activities as part of the trade, be treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

## **CHAPTER 8**

### **SUPPLEMENTARY PROVISIONS AND INTERPRETATION OF PART**

#### *Unit trusts*

## **207 Application of Part to unit trusts**

- (1) This Part has effect as follows.
- (2) As if a unit trust scheme were a company that is a body corporate.
- (3) As if the rights of the unit holders under a unit trust scheme were shares in the company that the scheme is deemed to be.
- (4) As if rights and powers of a person in the capacity of a person entitled to act for the purposes of a unit trust scheme were rights and powers of the scheme.
- (5) As if provision made or imposed as between—
  - (a) a person in the capacity of a person entitled to act for the purposes of a unit trust scheme, and
  - (b) another person,were made or imposed as between the scheme and that other person.

#### *Determinations requiring Commissioners' sanction*

## **208 The determinations which require the Commissioners' sanction**

- (1) A determination requires the Commissioners' sanction if it—

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- (a) is a transfer-pricing determination made for any of the specified purposes, and
  - (b) is not excepted by section 209 from the requirement for the Commissioners' sanction.
- (2) In subsection (1) “transfer-pricing determination” means a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5).
- (3) For the purposes of subsection (1), each of the following is a specified purpose—
- (a) the giving of a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,
  - (b) the giving of a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,
  - (c) the giving of a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,
  - (d) the giving of a notice under section 30B(1) of TMA 1970 amending a partnership return,
  - (e) the making of an assessment under section 29 of TMA 1970,
  - (f) the making of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and
  - (g) the making of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

## **209 Determinations exempt from requirement for Commissioners' sanction**

- (1) A transfer-pricing determination made for a purpose specified in section 208(3) (“the specified purpose”) does not require the Commissioners' sanction if—
- (a) an agreement about the matters to which the determination relates has been made between an officer and the person in whose case the determination is made,
  - (b) the agreement is in force at the relevant time, and
  - (c) the matters to which the agreement relates include the amount determined by the transfer-pricing determination.
- (2) For the purposes of subsection (1)(b)—
- (a) if the specified purpose is within section 208(3)(a) to (d), “the relevant time” is when the notice is given,
  - (b) if the specified purpose is within section 208(3)(e) or (f), “the relevant time” is when any notice of the assessment is given, and
  - (c) if the specified purpose is within section 208(3)(g), “the relevant time” is when any notice of the discovery determination is given.
- (3) For the purposes of subsection (1)(b), an agreement made between an officer and any person in relation to any matter is “in force” at any time if (and only if)—
- (a) the agreement is one that has been made or confirmed in writing,
  - (b) that time is after the end of the cooling-off period, and

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- (c) the person has not, before the end of the cooling-off period, served a notice on an officer stating that the person is repudiating or resiling from the agreement.
- (4) In subsection (3) “the cooling-off period” means—
  - (a) if the agreement is made in writing, the 30 days beginning with the day when the agreement is made, and
  - (b) in any other case, the 30 days beginning with the day when the agreement is confirmed in writing.
- (5) For the purposes of subsections (3) and (4), an agreement made between an officer and any person is “confirmed in writing” if an officer serves on the person a notice in writing—
  - (a) stating that the agreement has been made, and
  - (b) setting out the terms of the agreement.
- (6) In this section—
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
  - “officer” means officer of Revenue and Customs, and
  - “transfer-pricing determination” has the meaning given by section 208(2).

## **210 The requirement for the Commissioners' sanction**

- (1) Subsection (2) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(a) to (d) if, under section 208(1), the determination requires the Commissioners' sanction.
- (2) If the closure notice, or notice under section 30B(1) of TMA 1970, is given to a person—
  - (a) without the determination, so far as it is taken into account in the notice, having been approved by the Commissioners, or
  - (b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,the notice has effect as if given in the terms (if any) in which it would have been given had the determination not been taken into account.
- (3) Subsection (4) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(e) to (g) if, under section 208(1), the transfer-pricing determination requires the Commissioners' sanction.
- (4) If notice of the assessment, or notice of the discovery determination, is given to a person—
  - (a) without the transfer-pricing determination, so far as it is taken into account in the assessment or discovery determination, having been approved by the Commissioners, or
  - (b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,the assessment or discovery determination has effect as if made (and notified) in the terms (if any) in which it would have been made had the transfer-pricing determination not been taken into account.

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- (5) For the purposes of subsections (2) and (4), the Commissioners' approval of a transfer-pricing determination requiring their sanction—
- (a) must be given specifically in relation to the case concerned and must apply to the amount determined, but
  - (b) subject to that, may be given by the Commissioners (either before or after the determination is made) in any such form or manner as the Commissioners may determine.
- [<sup>F50</sup>(6) In this section—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs, and
- “transfer-pricing determination” has the meaning given by section 208(2).]

#### **Textual Amendments**

**F50** S. 210(6) substituted (retrospectively and with effect in accordance with art. 1(2) of the amending S.I.) by [Taxation \(International and Other Provisions\) Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2901\)](#), arts. 1(1), 4(4)

## **211 Restriction of right to appeal against Commissioners' approval**

- (1) In subsection (2)—
- “appeal” means an appeal by virtue of any provision of—
- (a) TMA 1970, or
  - (b) Schedule 18 to FA 1998 (company tax returns and related matters), and
- “approved determination” means a determination that, for the purposes of section 210(2) or (4), has been approved by the Commissioners.
- (2) The matters that may be questioned on so much of an appeal as relates to an approved determination do not include the Commissioners' approval.
- (3) Subsection (2) does not apply so far as the grounds for questioning the approval are the same as the grounds for questioning the determination.
- (4) In this section “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.

### *Appeals*

## **212 Appeals**

- (1) The appeals within this subsection are—
- (a) an appeal under section 31 of, or Schedule 1A to, TMA 1970,
  - (b) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company's return, and
  - (c) an appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.
- (2) Subsection (3) applies so far as the question in dispute on an appeal within subsection (1)—



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- (a) is or involves a determination of whether this Part has effect, and
  - (b) relates to any provision made or imposed as between two persons each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).
- (3) If this subsection applies—
- (a) each of the persons as between whom the actual provision was made or imposed is entitled to be a party in any proceedings,
  - (b) the tribunal is to determine the question separately from any other question in the proceedings, and
  - (c) the tribunal's determination on the question has effect as if made in an appeal to which each of those persons was a party.
- (4) In subsection (1)(c)—
- “discovery assessment” means a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 that Schedule), and
  - “discovery determination” means a discovery determination under paragraph 41 of that Schedule.

#### *Effect of Part on capital allowances and chargeable gains*

### **213 Capital allowances**

- (1) Nothing in this Part is to be read as affecting the calculation of the amount of any capital allowance or balancing charge made under CAA 2001.
- (2) Subsection (1) does not apply in relation to claims under section 174.

### **214 Chargeable gains**

- (1) Nothing in this Part is to be read as affecting the calculation in accordance with TCGA 1992 of the amount of any chargeable gain or allowable loss.
- (2) Nothing in this Part requires the profits and losses of any person to be calculated for tax purposes as if, in the person's case, instead of income or losses to be brought into account in connection with the taxation of income, there were gains or losses to be brought into account in accordance with TCGA 1992.
- (3) Subsections (1) and (2) do not apply in relation to claims under section 174.

#### *Adjustments*

### **215 Manner of making adjustments to give effect to Part**

Any adjustments required to be made under this Part may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

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## *Definitions*

### **216 Meaning of “the relevant activities”**

- (1) In this Part “the relevant activities”, in relation to a person (“A”) who is one of the persons as between whom any provision is made or imposed, means activities that—
  - (a) are within subsection (2), and
  - (b) are not within subsection (3).
- (2) The activities within this subsection are those of A's activities that comprise the activities in the course of which, or with respect to which, that provision is made or imposed.
- (3) The activities within this subsection are any of A's activities carried on—
  - (a) separately from the activities mentioned in subsection (2), or
  - (b) for the purposes of a different part of A's business.

### **217 Meaning of “control” and “firm”**

- (1) References in this Part to a person controlling a body corporate or firm are to be read in accordance with section 1124 of CTA 2010.
- (2) Subsection (1) has effect subject to subsection (4) and section 205(2).
- (3) Subsection (4) applies if—
  - (a) the actual provision is made or imposed by or in relation to a sale of oil,
  - (b) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company (“the producer”) which, although it may be the seller, is not the buyer, and
  - (c) at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier, at least 20% of the producer's ordinary share capital is owned directly or indirectly by one or more of the buyer and the companies (if any) that are linked to the buyer.
- (4) If this subsection applies, this Part has effect in relation to the actual provision as if—
  - (a) the buyer and the seller, and
  - (b) the producer, if it is not the seller,
 were all controlled by the same person at the time of the making or imposition of the actual provision.
- (5) For the purposes of subsection (3)(c), two companies are “linked” if—
  - (a) one is under the control of the other, or
  - (b) both are under the control of the same person or persons.
- (6) For the purposes of subsection (3)—
  - (a) any question whether ordinary share capital is owned directly or indirectly by a company is to be decided as for Chapter 3 of Part 24 of CTA 2010, and
  - (b) rights to extract oil are to be taken to be exercisable by a company even if they are exercisable by that company only jointly with another company or two or more other companies.
- (7) In this section “oil” includes any mineral oil or relative hydrocarbon oil, as well as natural gas.

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- (8) In this Part persons carrying on a trade, profession or other business in partnership are referred to collectively as a “firm”.

## PART 5

### ADVANCE PRICING AGREEMENTS

#### 218 Meaning of “advance pricing agreement”

- (1) In this Part “advance pricing agreement” means a written agreement that—
- (a) is made by the Commissioners with any person (“A”) as a consequence of an application by A under section 223,
  - (b) relates to one or more of the matters mentioned in subsection (2), and
  - (c) declares that it is an agreement made for the purposes of this section.
- (2) Those matters are—
- (a) if A is not a company, the attribution of income to a branch or agency through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
  - (b) if A is a company, the attribution of income to a permanent establishment through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,
  - (c) the attribution of income to any permanent establishment of A's, wherever situated, through which A has been carrying on, or is proposing to carry on, any business,
  - (d) the extent to which income that has arisen or may arise to A is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom,
  - (e) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between A and any associate (see section 219) of A's, and
  - (f) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between an oil-related ring-fence trade carried on by A (see section 206) and any other activities carried on by A.

#### 219 Meaning of “associate” in section 218(2)(e)

- (1) This section applies for the purposes of section 218(2)(e).
- (2) Two persons are associates in relation to provision made or imposed as between them if at the time of the making or imposition of the provision—
- (a) one of them is directly or indirectly participating in the management, control or capital of the other, or
  - (b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of the two persons.
- (3) Two persons are also associates in relation to any provision if section 217(4) (which applies to provision made or imposed in connection with sales of oil) requires the persons to be treated as controlled by the same person at the time of the making or imposition of that provision.

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- (4) For the interpretation of subsection (2), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (2) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

## **220 Effect of agreement on party to it**

- (1) Subsection (2) applies if a chargeable period is one to which an advance pricing agreement relates.
- (2) The Tax Acts have effect in relation to the chargeable period as if, in the case of the person with whom the Commissioners made the agreement, questions relating to the matters mentioned in section 218(2) are to be determined—
- (a) in accordance with the agreement, and
  - (b) without reference to the provisions in accordance with which they would otherwise be determined.
- (3) Subsection (2) is subject to—
- subsections (4) and (5), and
  - section 221.
- (4) A question is to be determined as mentioned in subsection (2) only so far as the agreement provides for the question to be determined in that way.
- (5) In the case of so much of a question as—
- (a) relates to any matter mentioned in paragraph (e) or (f) of section 218(2), and
  - (b) is not comprised in a question that relates to a matter within another paragraph of section 218(2),
- reference to a provision is capable of being excluded under subsection (2) by an advance pricing agreement only if the provision is in Part 4.

## **221 Effect of revocation of agreement or breach of its conditions**

- (1) An advance pricing agreement does not have effect in accordance with section 220(2) in relation to any determination of a question if any of conditions A, B and C is met.
- (2) Condition A is that a time to which the question relates is after a time as from which an officer has revoked the agreement in accordance with the agreement's terms.
- (3) Condition B is that the question relates to a time after, or in relation to which, there has been a failure by a party to the agreement to comply with a significant provision of the agreement.
- (4) Condition C is that the question relates to a matter as respects which a key condition has not been met or is no longer met.
- (5) A provision of the agreement is “significant” for the purposes of subsection (3) if compliance with that provision is, under the terms of the agreement, to be a condition of the agreement's having effect.
- (6) Any other condition that, under the terms of the agreement, is to be a condition of the agreement's having effect is a “key condition” for the purposes of subsection (4).

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## **222 Effect of agreement on non-parties**

- (1) Subsections (2), (5) and (6) apply if—
  - (a) an advance pricing agreement has effect in relation to any provision (“the actual provision”) made or imposed as between any person (“A”) and another (“B”), and
  - (b) section 220(2) has the effect in A's case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable because of Part 4.
- (2) The provisions mentioned in subsection (3) have effect in B's case on the assumption that any question within subsection (4) is to be determined, to the same extent as in A's case, by reference to the agreement.
- (3) The provisions are—
  - sections 174 to 178 (transfer pricing: claim by disadvantaged person), and
  - sections 188 and 189 (transfer pricing: adjustment of double taxation relief if claim made).
- (4) The questions are—
  - (a) whether A is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and
  - (b) what constitutes the arm's length provision in relation to the actual provision.
- (5) Subsection (2) has effect subject to any advance pricing agreement made between the Commissioners and B.
- (6) Any assumptions to be made because of the agreement are “advance-pricing-agreement assumptions” for the purposes of paragraph (b) of the definition in section 185(5) of “transfer-pricing determination”.

## **223 Application for agreement**

- (1) For the purposes of section 218(1)(a), an application by a person (“A”) is an application under this section if it complies with subsections (2) to (5).
- (2) It must be an application to the Commissioners for the clarification by agreement of the effect in A's case of provisions by reference to which questions relating to any one or more of the matters mentioned in section 218(2) are to be, or might be, determined.
- (3) It must set out A's understanding of what would in A's case be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought.
- (4) It must set out the respects in which it appears to A that clarification is required in relation to those provisions.
- (5) It must set out how A proposes that matters should be clarified in a manner consistent with the understanding mentioned in subsection (3).

## **224 Provision in agreement about years ended or begun before agreement made**

- (1) An advance pricing agreement may contain provision relating to chargeable periods ending before the agreement is made, subject to subsection (2).

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- (2) An advance pricing agreement may not contain provision relating to chargeable periods ending before 27 July 1999.
- (3) If an advance pricing agreement—
  - (a) relates to a chargeable period beginning or ending before the agreement is made, and
  - (b) provides for the manner in which adjustments are to be made for tax purposes in consequence of the agreement,
 the adjustments are to be made for those purposes in the manner provided for in the agreement.

## **225 Modification and revocation of agreement**

- (1) Subsection (2) applies if an advance pricing agreement provides for the modification, or revocation, of the agreement—
  - (a) by the Commissioners, or
  - (b) by an officer.
- (2) The agreement may provide for the modification or revocation to take effect as from such time as the Commissioners or officer may determine.
- (3) A time determined under subsection (2) may be (but need not be) a time before the modification is made or the agreement is revoked.

## **226 Annulment of agreement for misrepresentation**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that the Commissioners and any person (“A”) have at any time purported to enter into an advance pricing agreement.
- (3) Condition B is that, before that time, A fraudulently or negligently provided the Commissioners with information which was false or misleading.
- (4) Condition C is that the information was so provided—
  - (a) for or in connection with the application to the Commissioners for the making of the agreement, or
  - (b) otherwise in connection with the preparation of the agreement.
- (5) Condition D is that the Commissioners have notified A that the agreement is nullified by reason of the misrepresentation.
- (6) The agreement is to be treated as never made.

## **227 Penalty for misrepresentation in connection with agreement**

A person is liable to a penalty of not more than £10,000 if the person fraudulently or negligently makes a false or misleading statement to the Commissioners or an officer—

- (a) for or in connection with any application to the Commissioners for them to enter into an advance pricing agreement, or
- (b) otherwise in connection with the preparation of an advance pricing agreement.

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## 228 Party to agreement: duty to provide information

A party to an advance pricing agreement must provide the Commissioners from time to time with all reports and other information that the party may be required to provide—

- (a) under the agreement, or
- (b) as a result of a request made by an officer in accordance with the agreement.

## 229 Modifications of agreement for double taxation purposes

- (1) Subsection (2) applies if a mutual agreement made under and for the purposes of any double taxation arrangements is not consistent with the terms of an advance pricing agreement.
- (2) The Commissioners must ensure that the advance pricing agreement is modified so far as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the advance pricing agreement.
- (3) The Commissioners may comply with subsection (2) by exercising powers conferred on them by the advance pricing agreement or otherwise.
- (4) In this section “double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

## 230 Interpretation of Part: meaning of “Commissioners” and “officer”

In this Part—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs, and

“officer” means an officer of Revenue and Customs.

## PART 6

### TAX ARBITRAGE

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

**C13** Pt. 6 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 2](#))

### Introduction

## 231 Overview

- (1) This Part provides for the service on companies of two kinds of notice, as a result of which they must calculate or recalculate their income or chargeable gains or liability to corporation tax less advantageously.
- (2) Sections 232 to 248 deal with the first kind of notice (“deduction notices”).
- (3) In particular—

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- (a) see sections 232 to 235 for provisions about the service of deduction notices,
  - (b) see sections 236 to 242 for the kinds of schemes (“deduction schemes”) involved, and
  - (c) see sections 243 to 248 for the consequences of such notices.
- (4) Sections 249 to 254 deal with the second kind of notice (“receipt notices”).
- (5) In particular—
- (a) see sections 249 to 253 for provisions about the service of receipt notices, and
  - (b) see section 254 for their consequences.
- (6) Sections 255 to 257 contain general provisions about both kinds of notice.
- (7) For the meaning of “scheme” etc, see section 258 (schemes and series of transactions).
- [<sup>F51</sup>(8) This Part has effect subject to section 938N of CTA 2010 (this Part treated as of no effect for the purposes of Part 21B of CTA 2010 (group mismatch schemes)).]

#### **Textual Amendments**

**F51** S. 231(8) inserted (with effect in accordance with Sch. 5 para. 6 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 5\(2\)](#)

### *Deduction notices*

#### **232 Deduction notices**

- (1) An officer of Revenue and Customs may give a company a notice under this section if—
- (a) the company is within the charge to corporation tax, and
  - (b) the officer considers on reasonable grounds that each of the deduction scheme conditions is or may be met in relation to a transaction to which the company is party.
- (2) In this Part—
- (a) a notice under this section is referred to as a “deduction notice”, and
  - (b) “the deduction scheme conditions” means the conditions specified in section 233.
- (3) For the consequences of a deduction notice, see section 243.

#### **233 The deduction scheme conditions**

- (1) This section sets out the deduction scheme conditions.
- (2) Deduction scheme condition A is that the transaction to which the company is party forms part of a scheme that is a deduction scheme for the purposes of this Part (see sections 236 to 242).
- (3) Deduction scheme condition B is that the scheme is such that for corporation tax purposes the company—



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- (a) is in a position to claim, or has claimed, an amount by way of deduction in respect of the transaction, or
  - (b) is in a position to set off, or has set off, an amount relating to the transaction against profits in an accounting period.
- (4) Deduction scheme condition C is that the main purpose of the scheme, or one of its main purposes, is to achieve a UK tax advantage for the company.
- (5) Deduction scheme condition D is that the amount of the UK tax advantage is more than minimal.

### **234 Schemes achieving UK tax advantage for a company**

- (1) For the purposes of section 233, a scheme achieves a UK tax advantage for a company if, in consequence of the scheme, the company is in a position to obtain, or has obtained—
- (a) a relief or increased relief from corporation tax,
  - (b) a repayment or increased repayment of corporation tax, or
  - (c) the avoidance or reduction of a charge to corporation tax.
- (2) In subsection (1)(a) “relief from corporation tax” includes a tax credit under section 1109 of CTA 2010 (tax credits for certain recipients of qualifying distributions) for the purposes of corporation tax.
- (3) For the purposes of subsection (1)(c) avoidance or reduction may, in particular, be effected—
- (a) by receipts accruing in such a way that the recipient does not pay or bear tax on them, or
  - (b) by a deduction in calculating profits or gains.

### **235 Further provisions about deduction notices**

- (1) A deduction notice must specify the transaction in relation to which the officer of Revenue and Customs considers that each of the deduction scheme conditions is or may be met.
- (2) A deduction notice must specify the accounting period in relation to which the officer considers that deduction scheme condition B is or may be met in relation to the transaction.
- (3) A deduction notice must inform the company to which it is given that, as a result of the service of the notice, section 243(2) to (6) (consequences of a deduction notice) will apply if each of the deduction scheme conditions is met in relation to the transaction.
- (4) A deduction notice may relate to two or more transactions.

#### *Deduction schemes*

### **236 Schemes involving hybrid entities**

- (1) A scheme is a deduction scheme if a party to a transaction forming part of the scheme meets conditions A and B.

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- (2) Condition A is that the party is regarded as being a person under the tax law of any territory.
- (3) Condition B is that the party's profits or gains are treated, for the purposes of a relevant tax imposed under the law of any territory, as the profits or gains of a person or persons other than the person mentioned in condition A.
- (4) Condition B is not met just because the party's profits or gains are subject to a rule that—
  - (a) is similar to that in section 747(3) of ICTA (imputation of chargeable profits of controlled foreign company), and
  - (b) has effect under the tax law of any territory outside the United Kingdom.
- (5) For the purposes of this section, the following are relevant taxes—
  - (a) income tax,
  - (b) corporation tax, and
  - (c) any tax of a similar character to income tax or corporation tax that is imposed by the law of a territory outside the United Kingdom.

### **237 Instruments of alterable character**

- (1) A scheme is a deduction scheme if one of the parties to the scheme is party to an instrument within subsection (2).
- (2) An instrument is within this subsection if under the law of a particular territory any party to the instrument may alter its tax characteristics.
- (3) The reference to altering an instrument's tax characteristics is to making an alteration which, under the law of a particular territory, has the effect of determining, for the tax purposes of that territory, whether the instrument is taken into account as giving rise—
  - (a) to income,
  - (b) to capital, or
  - (c) to neither.
- (4) An instrument is taken into account as giving rise to capital if any gain on the disposal of the instrument—
  - (a) would be a chargeable gain, or
  - (b) would be such a gain if the person making the disposal were UK resident.

### **238 Shares subject to conversion**

- (1) A scheme is a deduction scheme if it includes—
  - (a) a company issuing shares subject to conversion, or
  - (b) such an amendment of rights attaching to shares issued by a company that the shares become shares subject to conversion.
- (2) For the purposes of subsection (1)(a) a company's shares are shares subject to conversion if conditions A and B are met.
- (3) For the purposes of subsection (1)(b) a company's shares are shares subject to conversion if conditions A and C are met.

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- (4) Condition A is that the rights attached to the shares include provision as a result of which a holder of such shares is entitled, on the occurrence of an event, to acquire securities in a company by conversion or exchange.
- (5) Condition B is that at the time when the shares are issued the company could reasonably expect that event to occur.
- (6) Condition C is that at the time when the rights attaching to the shares are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

### **239 Securities subject to conversion**

- (1) A scheme is a deduction scheme if it includes—
  - (a) a company issuing securities subject to conversion, or
  - (b) such an amendment of rights attaching to securities issued by a company that the securities become securities subject to conversion.
- (2) For the purposes of subsection (1)(a) a company's securities are securities subject to conversion if conditions A and B are met.
- (3) For the purposes of subsection (1)(b) a company's securities are securities subject to conversion if conditions A and C are met.
- (4) Condition A is that the rights attached to the securities include provision as a result of which a holder of such securities is entitled, on the occurrence of an event, to acquire shares in a company by conversion or exchange.
- (5) Condition B is that at the time when the securities are issued the company could reasonably expect that event to occur.
- (6) Condition C is that at the time when the rights attaching to the securities are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

### **240 Debt instruments treated as equity**

- (1) A scheme is a deduction scheme if it includes a debt instrument issued by a company that is treated as equity in the company under generally accepted accounting practice.
- (2) In this section “debt instrument” means an instrument issued by a company that—
  - (a) represents a loan relationship of the company, or
  - (b) would do so if the company were UK resident.

### **241 Scheme including issue of shares not conferring qualifying beneficial entitlement**

- (1) A scheme is a deduction scheme if—
  - (a) it includes a company issuing shares to a connected person, and
  - (b) the shares do not meet conditions A, B and C.
- (2) Condition A is that on their issue the shares are ordinary shares that are fully paid-up.
- (3) Condition B is that when the issue takes place there is no arrangement or understanding under which the rights attaching to the shares may be amended.

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- (4) Condition C is that, at all times in the accounting period of the company in which the issue takes place, each of the shares confers a beneficial entitlement to the appropriate proportion of—
  - (a) any profits available for distribution to equity holders of the company, and
  - (b) any assets of the company available for distribution to its equity holders on a winding-up.
- (5) For the purposes of subsection (4) the appropriate proportion, in relation to a share, is the same as the proportion of the issued share capital represented by that share.
- (6) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (4) as it applies for the purposes of the provisions specified in section 157(1) of that Act.

## **242 Scheme including transfer of rights under a security**

- (1) A scheme is a deduction scheme if each of conditions A to D is met.
- (2) Condition A is that the scheme includes a transaction or a series of transactions under which a person (“the transferor”)—
  - (a) transfers to one or more other persons rights to receive a payment under a security, or
  - (b) otherwise secures that one or more other persons are similarly benefited.
- (3) A person is similarly benefited for these purposes if the person receives a payment which, but for the transaction or series of transactions, would have arisen to the transferor.
- (4) Condition B is that—
  - (a) the transferor, and
  - (b) at least one of the persons to whom a transfer of rights is made or a similar benefit is secured,
 are connected with each other.
- (5) Condition C is that, immediately after the transfer of rights or the securing of the similar benefit, two or more persons—
  - (a) hold rights to receive a payment under the security, or
  - (b) enjoy a similar benefit.
- (6) Condition D is that, immediately after the transfer of rights or the securing of the similar benefit, the market value of all the relevant benefits of such of those persons as are connected equals or exceeds the market value of all other relevant benefits.
- (7) In subsection (6) “relevant benefits” means—
  - (a) rights to receive a payment under the security, and
  - (b) similar benefits.
- (8) In this section “security” includes an agreement under which a person receives an annuity or other annual payment (whether it is payable annually or at shorter or longer intervals) for a term which is not contingent on the duration of a human life or lives.

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### *Consequences of deduction notices*

#### **243 Consequences of deduction notices**

- (1) This section applies in relation to a transaction if—
  - (a) a deduction notice specifying the transaction is given to a company under section 232, and
  - (b) when the notice is given, each of the deduction scheme conditions is met in relation to the transaction.
- (2) The company must calculate (or recalculate) its income or chargeable gains for the purposes of corporation tax, or its liability to corporation tax, for—
  - (a) the accounting period specified in the deduction notice, and
  - (b) any later accounting period.
- (3) That calculation (or recalculation) must be done in accordance with—
  - (a) the rule in section 244 (the rule against double deduction), and
  - (b) the rule in section 248 (the rule against deduction for untaxable payments) if it applies (see section 245).
- (4) But the company is treated as having complied with subsections (2) and (3), so far as the scheme specified in the deduction notice is concerned, if the company incorporates the necessary relevant adjustments in its company tax return for the accounting period specified in the notice.
- (5) For the purposes of subsection (4), adjustments are relevant if they—
  - (a) treat all or part of a deduction allowable for corporation tax purposes as not being allowable, or
  - (b) treat all or part of an amount that for corporation tax purposes may be set off against profits in an accounting period as not falling to be set off.
- (6) For the purposes of subsection (4), relevant adjustments are the necessary adjustments if—
  - (a) they are such adjustments as are necessary for counteracting those effects of the scheme that are referable to the purpose referred to in deduction scheme condition C (see section 233(4)), and
  - (b) as a result of their incorporation in the return, the company counteracts those effects.

#### **244 The rule against double deduction**

- (1) The rule referred to in section 243(3)(a) is that, in respect of the transaction specified in the deduction notice, no amount is allowable as a deduction for the purposes of the Corporation Tax Acts so far as an amount is otherwise deductible or allowable in relation to the expense in question.
- (2) An amount is otherwise deductible or allowable if it may be otherwise deducted or allowed in calculating the income, profits or losses of any person for the purposes of any tax to which this subsection applies.
- (3) Subsection (2) applies to any tax (including any non-UK tax) other than—
  - (a) petroleum revenue tax, or

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- (b) the tax chargeable under section 330(1) of CTA 2010 (supplementary charge in respect of ring fence trades).
- (4) The reference in subsection (2) to an amount being able to be otherwise deducted or allowed as mentioned in that subsection includes a reference to an amount that would be able to be so deducted or allowed but for any tax rule that has the same effect as the rule in subsection (1).
- (5) In subsection (4) “tax rule” means—
  - (a) a provision of the Tax Acts, or
  - (b) a rule having effect under the tax law of any territory outside the United Kingdom.
- (6) In this section “non-UK tax” has the meaning given in section 187 of CTA 2010.

## **245 Application of the rule against deduction for untaxable payments**

- (1) Section 248 (the rule against deduction for untaxable payments) applies if conditions A, B and C are met.
- (2) Condition A is that a transaction that forms part of the deduction scheme, or a series of transactions that forms part of the scheme, makes or imposes provision as a result of which—
  - (a) one person (“the payer”) makes a payment, and
  - (b) another person (“the payee”) receives, or becomes entitled to receive, a payment or payments.
- (3) Condition B is that, in respect of the payment by the payer, an amount may be deducted by, or otherwise allowed to—
  - (a) the payer, or
  - (b) another person who is party to, or concerned in, the scheme, in calculating any profits or losses for tax purposes.
- (4) Condition C is that as a result of provision made or imposed by the deduction scheme—
  - (a) the payee is not liable to tax—
    - (i) in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions, or
    - (ii) in respect of part of such payment or payments, or
  - (b) if the payee is so liable, the payee's liability to tax is reduced.
- (5) In this section—
  - (a) “the deduction scheme” means the scheme in relation to which the deduction scheme conditions are met, and
  - (b) “tax purposes” includes the purposes of any non-UK tax (within the meaning of section 187 of CTA 2010).
- (6) Sections 246 and 247 make further provision about condition C.
- (7) Expressions used in those sections or section 248 have the same meaning as in this section.

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## **246 Cases where payee's non-liability treated as not a result of scheme**

- (1) This section sets out two cases in which condition C in section 245(4) (which requires that as a result of the deduction scheme the payee is not liable to tax in respect of the whole or part of certain payments) is treated as not met.
- (2) The first case is where the reason why the payee is not liable to tax is that under the tax law of any territory the payee is not liable to tax on any income or gains received by the payee or received for the payee's benefit.
- (3) The second case is where, or to the extent that, the payee is not subject to tax because an exemption within subsection (4) applies.
- (4) An exemption is within this subsection if—
  - (a) it exempts a person from being liable to tax in respect of income or gains, without providing for that income or those gains to be treated as the income or gains of another person, and
  - (b) it is conferred by a provision contained in, or having the force of, an Act or by a provision of the tax law of any territory outside the United Kingdom.

## **247 Cases where payee treated as having reduced liability as a result of scheme**

- (1) This section sets out two cases in which the payee's liability to tax in respect of the scheme payment is treated for the purposes of section 245(4)(b) as reduced as a result of provision made or imposed by the deduction scheme.
- (2) But that does not mean that there are no other cases in which that liability is so reduced.
- (3) In this section “the scheme payment” means the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions referred to in section 245(2).
- (4) Case A is that an amount arising from—
  - (a) a transaction forming part of the scheme, or
  - (b) a series of such transactions,falls to be deducted by, or otherwise allowed to, the payee in calculating for tax purposes any profits or losses arising from the scheme payment or the entitlement to receive it.
- (5) Case B is that an amount of relief arising from—
  - (a) a transaction forming part of the scheme, or
  - (b) a series of such transactions,may be deducted from the amount of income or gains arising from the scheme payment or the entitlement to receive it.

## **248 The rule against deduction for untaxable payments**

- (1) The rule referred to in section 243(3)(b) is that the total deduction amount must be reduced.
- (2) In this section “the total deduction amount” means the total of the amounts allowable as a deduction for the purposes of the Corporation Tax Acts in calculating any profits arising to the company from any transaction forming part of the deduction scheme.

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- (3) If the payee is not liable to tax for the purposes of section 245(4) in respect of the payment or payments that the payee receives or is entitled to receive, the total deduction amount must be reduced to nil.
- (4) If the payee is liable to tax for those purposes in respect of part of that payment or those payments, the total deduction amount must be reduced by the same proportion of that amount as the proportion of the payment or payments on which the payee is not liable to tax.
- (5) If the payee's liability to tax is reduced as described in section 245(4)(b), the total deduction amount must be reduced by the same proportion of that amount as the reduction in the payee's liability bears to that liability before reduction.

### *Receipt notices*

#### **249 Receipt notices**

- (1) An officer of Revenue and Customs may give a company a notice under this section if—
  - (a) the company is UK resident, and
  - (b) the officer considers on reasonable grounds that each of the receipt scheme conditions is or may be met in relation to the company.
- (2) In this Part—
  - (a) a notice under this section is referred to as a “receipt notice”, and
  - (b) “the receipt scheme conditions” means the conditions specified in section 250.
- (3) For the consequences of a receipt notice, see section 254.

#### **250 The receipt scheme conditions**

- (1) This section sets out the receipt scheme conditions.
- (2) Receipt scheme condition A is that a scheme makes or imposes provision as between the company and another person (“the paying party”) by means of a transaction or series of transactions.
- (3) Receipt scheme condition B is that that provision includes the paying party making, by means of a transaction or series of transactions, a payment—
  - (a) which is a qualifying payment in relation to the company, and
  - (b) at least part of which is not an amount to which section 251 (amounts within corporation tax) applies.
- (4) A payment is a qualifying payment in relation to a company for the purposes of this section and sections 251 to 254 if it constitutes a contribution to the capital of the company.
- (5) Receipt scheme condition C is that on entering into the scheme the company and the paying party expected that a benefit would arise because at least part of the qualifying payment was not an amount to which section 251 applies.
- (6) Receipt scheme condition D is that there is an amount in relation to the qualifying payment that—



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- (a) is a deductible amount, and
  - (b) is not set against any scheme income arising to the paying party for income tax purposes or corporation tax purposes.
- (7) In subsection (6)—
- “deductible amount” means an amount that—
    - (a) is available as a deduction for the purposes of the Tax Acts, or
    - (b) may be deducted or otherwise allowed under the tax law of any territory outside the United Kingdom, and
  - “scheme income” means income arising from the transaction or transactions forming part of the scheme.
- (8) Section 253 (exception for dealers) specifies a case where receipt scheme condition D is treated as not met.

## **251 Amounts within corporation tax**

- (1) This section applies to an amount if it falls within subsection (2) or (4).
- (2) An amount is within this subsection if for the purposes of the Corporation Tax Acts it is—
  - (a) income or chargeable gains arising to the company in the accounting period in which the qualifying payment was made, or
  - (b) income arising to any other UK resident company in a corresponding accounting period.
- (3) For the purposes of this section, the accounting period of one company (“the first period”) corresponds to the accounting period of another company (“the second period”) if at least one day of the first period falls within the second period.
- (4) An amount is within this subsection if it is brought into account as a result of Chapter 2A or 6A of Part 6 of CTA 2009 (relationships treated as loan relationships: disguised interest, and shares accounted for as liabilities).

## **252 Further provisions about receipt notices**

- (1) A receipt notice must inform the company to which it is given that the officer of Revenue and Customs giving it considers that each of the receipt scheme conditions is or may be met in relation to the company.
- (2) A receipt notice must specify the qualifying payment by reference to which the officer of Revenue and Customs considers receipt scheme conditions B, C and D are or may be met.
- (3) A receipt notice must specify the accounting period of the company in which the qualifying payment is made.
- (4) A receipt notice must inform the company that, as a result of the service of the notice, section 254(2) (rule for calculation or recalculation of income etc following receipt notice) will apply in relation to the payment if each of the receipt scheme conditions is met in relation to the company.

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### **253 Exception for dealers**

- (1) Receipt scheme condition D (see section 250(6)) is treated as not met if—
  - (a) the paying party (“P”) is a dealer,
  - (b) in the ordinary course of P’s business, P incurs losses in respect of the transaction or transactions forming part of the scheme to which P is party, and
  - (c) the amount by reference to which that condition would be met, but for this section, is an amount in respect of those losses.
- (2) In subsection (1) “dealer” means a person who—
  - (a) is charged to corporation tax under Part 3 of CTA 2009 (trading income) in respect of distributions of companies that are received in the course of a trade not consisting of insurance business, or
  - (b) would be so charged if UK resident.
- (3) In this section “the paying party” has the same meaning as in section 250.

### **254 Rule for calculation or recalculation of income etc following receipt notice**

- (1) This section applies in relation to a qualifying payment if—
  - (a) a receipt notice specifying the payment is given to the company in relation to which it is a qualifying payment, and
  - (b) when the notice is given, each of the receipt scheme conditions is met in relation to the company.
- (2) The company must calculate (or recalculate)—
  - (a) its income or chargeable gains for the purposes of corporation tax for the accounting period specified in the notice, or
  - (b) its liability to corporation tax for that period,
 as if so much of the qualifying payment as falls within subsection (3) were a receipt of the company that is chargeable for that period under the charge to corporation tax on income.
- (3) The qualifying payment falls within this subsection so far as—
  - (a) receipt scheme condition D (see section 250(6)) is met in relation to it, and
  - (b) it is not an amount to which section 251 (amounts within corporation tax) applies.

*General provisions about deduction notices and receipt notices*

### **255 Notices given before tax return made**

- (1) This section applies if an officer of Revenue and Customs gives a company a deduction notice or a receipt notice before the company has made its company tax return for the accounting period specified in the notice.
- (2) If the company makes that return before the end of the period of 90 days beginning with the day on which the notice is given, it may—
  - (a) make a return that disregards the notice, and
  - (b) at any time after making the return and before the end of that 90 day period, amend the return for the purpose of complying with the provision referred to in the notice.

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- (3) Subsection (2)(b) does not prevent a company tax return for a period becoming incorrect if—
- (a) a deduction notice or a receipt notice is given to the company in relation to that period,
  - (b) the return is not amended in accordance with subsection (2)(b) for the purpose of complying with the provision referred to in the notice, and
  - (c) it ought to have been so amended.

## **256 Notices given after tax return made**

- (1) If a company has made a company tax return for an accounting period, an officer of Revenue and Customs may only give the company a deduction notice or a receipt notice if a notice of enquiry has been given to the company in respect of the return.
- (2) After any enquiries into the return have been completed, an officer of Revenue and Customs may only give the company a deduction notice or a receipt notice if conditions A and B are met.
- (3) Condition A is that the officer could not have been reasonably expected to have been aware that the circumstances were such that a deduction notice or a receipt notice could have been given to the company in relation to the period.
- (4) Whether condition A is met must be determined on the basis of information made available to the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs before the time the enquiries into the return were completed.
- (5) Paragraph 44(2) and (3) of Schedule 18 to FA 1998 (information made available) applies for the purposes of subsection (4) as it applies for the purposes of paragraph 44(1) of that Schedule.
- (6) Condition B is that—
- (a) the company was requested to provide information during an enquiry into the return, and
  - (b) if the company had duly complied with the request, an officer of Revenue and Customs could reasonably have been expected to give the company a deduction notice or a receipt notice in relation to the period.

## **257 Amendments, closure notices and discovery assessments where section 256 applies**

- (1) Subsection (2) applies if, after having made a company tax return for an accounting period, a company is given a deduction notice or a receipt notice in relation to the period (“the Part 6 notice”).
- (2) The company may amend the return for the purpose of complying with the provision referred to in the Part 6 notice at any time before the end of the period of 90 days beginning with the day on which the Part 6 notice is given (“the 90 day period”).
- (3) Subsection (4) applies if the Part 6 notice is given to the company after it has been given a notice of enquiry in respect of the return.
- (4) No closure notice may be given in relation to the return until—
- (a) the end of the 90 day period, or

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- (b) the earlier amendment of the return for the purpose of complying with the provision referred to in the Part 6 notice.
- (5) Subsection (6) applies if the Part 6 notice is given to the company after any enquiries into the return are completed.
- (6) No discovery assessment may be made in respect of the income or chargeable gain to which the Part 6 notice relates until—
  - (a) the end of the 90 day period, or
  - (b) the earlier amendment of the return for the purpose of complying with the provision referred to in the Part 6 notice.
- (7) Subsection (2) does not prevent a return for an accounting period becoming incorrect if—
  - (a) a deduction notice or receipt notice is given to the company in relation to the period,
  - (b) the return is not amended in accordance with subsection (2) for the purpose of complying with the provision referred to in the notice, and
  - (c) it ought to have been so amended.

### *Interpretation*

#### **258 Schemes and series of transactions**

- (1) In this Part “scheme” means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.
- (2) In determining whether any transactions have formed or will form part of a series of transactions or scheme for the purposes of this Part, it does not matter if the parties to one of the transactions are different from the parties to another of the transactions.
- (3) For the purposes of this Part, the cases in which any two or more transactions form, or form part of, a series of transactions or scheme include the cases where subsection (4) or (5) applies.
- (4) This subsection applies if it would be reasonable to assume that one or more of the transactions would not have been entered into independently of the other or others.
- (5) This subsection applies if it would be reasonable to assume that one or more of the transactions would not have taken the same form or been on the same terms if entered into independently of the other or others.

#### **259 Minor definitions**

- (1) In this Part—
  - “closure notice” means a notice under paragraph 32 of Schedule 18 to FA 1998,
  - “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of that Schedule, as read with paragraph 4 of that Schedule,
  - “discovery assessment” means an assessment under paragraph 41 of that Schedule,

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“notice of enquiry” means a notice under paragraph 24 of that Schedule,  
and

“security” has the meaning given in section 1117(1) of CTA 2010, but  
subject to section 242(8) of this Act.

- (2) Section 1122 of CTA 2010 (meaning of “connected”) applies for the purposes of this  
Part.

## PART 7

### TAX TREATMENT OF FINANCING COSTS AND INCOME

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

C14 Pt. 7 excluded by 2010 c. 4, s. 938N (as inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 2](#))

## CHAPTER 1

### INTRODUCTION

#### 260 Introduction

- (1) Chapter 2 contains provision for determining whether this Part applies in relation to  
any particular period of account of the worldwide group.
- (2) Chapter 3 provides for the disallowance of certain financing expenses of relevant  
group companies arising in a period of account of the worldwide group to which this  
Part applies.

The total of the amounts disallowed is the amount by which the tested expense amount  
(defined in Chapter 8) exceeds the available amount (defined in Chapter 9).

- (3) Chapter 4 provides for the exemption from the charge to corporation tax of certain  
financing income of UK group companies where financing expenses of relevant group  
companies have been disallowed under Chapter 3.
- (4) Chapter 5 provides for the exemption from the charge to corporation tax of certain  
intra-group financing income of UK group companies where the paying company is  
denied a deduction for tax purposes otherwise than under this Part.
- (5) Chapter 6 contains rules connected with tax avoidance.
- (6) Chapter 7 defines a “financing expense amount” and “financing income amount” of  
a company for a period of account of the worldwide group, which are amounts that  
would, apart from this Part, be brought into account for the purposes of corporation  
tax.
- (7) Chapter 8 defines the “tested expense amount” and the “tested income amount” of  
the worldwide group for a period of account of the group, which are totals deriving  
from the financing expense amounts and financing income amounts of certain group  
companies.

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- (8) Chapter 9 defines the “available amount” for a period of account of the worldwide group, which derives from certain financing costs disclosed in the group's consolidated financial statements.
- (9) Chapter 10 contains further interpretative [<sup>F52</sup>and supplementary] provisions.

#### Textual Amendments

**F52** Words in s. 260(9) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 2, 36(1)

## CHAPTER 2

### APPLICATION OF PART

#### 261 Application of Part

- (1) This Part applies to any period of account of the worldwide group for which—
- the UK net debt of the group (see sections 262 and 263), exceeds
  - 75% of the worldwide gross debt of the group (see section 264).
- (2) But a period of account that is within subsection (1) is not a period of account to which this Part applies if the worldwide group is a qualifying financial services group in that period (see section 266).
- (3) The Treasury may by order amend subsection (1)(b) by substituting a higher or lower percentage for the percentage for the time being specified there.
- (4) An order under subsection (3) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.
- (5) An order under subsection (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.

#### 262 UK net debt of worldwide group for period of account of worldwide group

- (1) [<sup>F53</sup>A reference in this Chapter] 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 [<sup>F54</sup>or a group securitisation company] at any time during the period.
- (2) In this section “net debt amount”, in relation to a company, means the average of—
- the net debt of the company as at that company's start date, and
  - the net debt of the company as at that company's end date.
- For the meaning of “net debt”, see section 263.
- (3) If the amount determined in accordance with subsection (2) is less than £3 million, the net debt amount of the company is nil.

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- (4) If a company is [<sup>F55</sup>a dormant company] 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 subsection (3) by substituting a higher or lower amount for the amount for the time being specified there.
- (6) An order under subsection (5) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.
- (7) An order under subsection (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 Chapter—
  - (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 [<sup>F56</sup>or a group securitisation 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 [<sup>F57</sup>or a group securitisation company].

#### Textual Amendments

- F53** Words in s. 262(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(2\)\(a\)](#), 36(1)
- F54** Words in s. 262(1) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(2\)\(b\)](#), 36(1)
- F55** Words in s. 262(4) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 2](#)
- F56** Words in s. 262(8)(a) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(3\)](#), 36(1)
- F57** Words in s. 262(8)(b) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 3\(3\)](#), 36(1)

## 263 Net debt of a company

- (1) References in section 262 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 subsection (1) may be a negative amount.
- [<sup>F58</sup>(3) For the purposes of this section, 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) borrowing (whether short term or long term and including borrowing by way of overdraft),
  - (b) liabilities in respect of finance leases,
  - (c) arrangements not within paragraph (a) or (b) that—
    - (i) are financial liabilities,

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- (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (d) such other matters as may be specified in regulations made by the Commissioners.
- (4) For the purposes of this section, 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) lending (whether short term or long term and including lending by way of overdraft),
  - (c) net investments, or net cash investments, in finance leases,
  - (d) securities issued by—
    - (i) the government of the United Kingdom or any territory outside the United Kingdom,
    - (ii) any public or local authority in the United Kingdom or any territory outside the United Kingdom, or
    - (iii) any company or other body of persons,
  - (e) arrangements not within paragraphs (b) to (d) that—
    - (i) are financial assets,
    - (ii) produce for the company a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (f) such other matters as may be specified in regulations made by the Commissioners.
- [<sup>F59</sup>(4A) For the purposes of subsections (3) and (4), if the company is one in relation to which an election under section 18A of CTA 2009 has effect anything that would otherwise form part of the company's relevant liabilities or relevant assets does not do so if and to the extent that amounts in respect of it are left out of account under that section.]
- (5) But an amount disclosed in the balance sheet of a company in respect of—
  - (a) the company's share capital, or
  - (b) shares or other equity interests in any other entity,
 is not a "relevant liability" or a "relevant asset" for the purposes of this section.
- (6) For the purposes of subsections (3) and (4) a return produced for a person by an arrangement in relation to any amount is "economically equivalent to interest" if (and only if)—
  - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (7) In subsection (6)(c) "the relevant time" means the time when the company becomes party to the arrangement.



*Status: Point in time view as at 31/12/2012.*

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- (8) For the purposes of subsections (3) and (4) an arrangement is “short term” if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.
- (9) In this section the following expressions have the meaning for the time being given by generally accepted accounting practice—
- “cash”,
  - “cash equivalent”,
  - “equity interest”,
  - “finance lease”,
  - “financial asset”,
  - “financial liability”,
  - “net cash investment”, in relation to a finance lease, and
  - “net investment”, in relation to a finance lease.]

#### Textual Amendments

- F58** S. 263(3)-(9) substituted for s. 263(3)-(5) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 4, 36\(1\)](#) (with [Sch. 5 para. 37](#))
- F59** S. 263(4A) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 29, 31](#)

## 264 Worldwide gross debt of worldwide group for period of account of the group

- (1) [<sup>F60</sup>A reference in this Chapter] 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 section, 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—
- [<sup>F61</sup>(a) borrowing (whether short term or long term and including borrowing by way of overdraft),
  - (b) liabilities in respect of finance leases,
  - (c) arrangements not within paragraph (a) or (b) that—
    - (i) are financial liabilities,
    - (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (d) such other matters as may be specified in regulations made by the Commissioners.]
- [<sup>F62</sup>(3) But an amount disclosed in the balance sheet of the group in respect of the share capital of any member of the group is not a “relevant liability” for the purposes of this section.
- (4) For the purposes of subsection (2) a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—

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- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (5) In subsection (4)(c) “the relevant time” means the time when any member of the group becomes party to the arrangement.
- (6) For the purposes of subsection (2) an arrangement is “short term” if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.
- (7) In this section the following expressions 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—
- “finance lease”, and
  - “financial liability”.
- (8) For provision about references in this Part to financial statements of the worldwide group, and amounts disclosed in financial statements, see sections 346 to 349.]

#### Textual Amendments

- F60** Words in s. 264(1) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(2\), 36\(1\)](#)
- F61** S. 264(2)(a)-(d) substituted for s. 264(a)-(c) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(3\), 36\(1\)](#) (with [Sch. 5 para. 37](#))
- F62** S. 264(3)-(8) substituted for s. 264(3)(4) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 5\(4\), 36\(1\)](#) (with [Sch. 5 para. 37](#))

## 265 References to amounts disclosed in balance sheet of <sup>F63</sup>a] company

- (1) This section applies for the purpose of construing references in section 263 to amounts disclosed in the balance sheet of a <sup>F64</sup>... company as at any date (“the relevant date”).
- (2) If 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) If 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.

*Status: Point in time view as at 31/12/2012.*

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- (4) If the company—
- (a) is a foreign company, and
  - (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 section, a <sup>F65</sup>... 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.

#### Textual Amendments

- F63** Word in s. 265 heading substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 6\(2\), 36\(1\)](#)
- F64** Words in s. 265(1) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 6\(3\), 36\(1\)](#)
- F65** Words in s. 265(5) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 6\(3\), 36\(1\)](#)

#### [<sup>F66</sup>265A Different accounting treatment used at company and group levels

- (1) This section applies where—
- (a) for the purposes of the computation of the UK net debt of the worldwide group, the amount of a relevant liability of a company (“the company-level relevant liability”) is determined in accordance with section 263,
  - (b) for the purposes of the computation of the worldwide gross debt of the group, the amount of a relevant liability of the worldwide group (“the group-level relevant liability”) is determined in accordance with section 264,
  - (c) the company-level relevant liability is an amount in respect of the same matter as—
    - (i) the group-level relevant liability, or
    - (ii) a liability comprised in the group-level relevant liability, and
  - (d) the amount of the company-level relevant liability would not, apart from this section, be the same as the amount of the liability mentioned in paragraph (c) (i) or (ii).
- (2) For the purposes of the computation mentioned in subsection (1)(a), the amount of the company-level relevant liability is the amount of the liability mentioned in subsection (1)(c)(i) or (ii).]

#### Textual Amendments

- F66** S. 265A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 7, 36\(1\)](#)

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## 266 Qualifying financial services groups

- (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 section 267).
- (3) In this Chapter, 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 [<sup>F67</sup>or a group securitisation company] at any time during that period (see section 271), and
- “worldwide trading income” means the trading income for that period of the worldwide group (see section 272).

### Textual Amendments

**F67** Words in s. 266(3) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 8, 36\(1\)](#)

## 267 Qualifying activities

In this Chapter “qualifying activities” means—

- (a) lending activities and activities that are ancillary to lending activities (see section 268),
- (b) insurance activities and insurance-related activities (see section 269), and
- (c) relevant dealing in financial instruments (see section 270).

## 268 Lending activities and activities ancillary to lending activities

- (1) In this Chapter “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,
  - (e) provision of guarantees or commitments to provide money,
  - (f) money transmission services,
  - (g) provision of alternative finance arrangements, and

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- (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 Chapter 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 subsection (2) “income” means the gross income or net income that would be taken into account for the purposes of section 266 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 subsection (1), and
  - (b) make other amendments of this section in consequence of any amendment of subsection (1).
- (5) In subsection (1)(h), and in the references to ancillary activities in this section and section 267(a), “activities” includes buying, holding, managing and selling assets.
- (6) In this section “alternative finance arrangements” has the same meaning as in Chapter 6 of Part 6 of CTA 2009.

## **269 Insurance activities and insurance-related activities**

- (1) In this Chapter “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 Chapter “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) Subsection (2) is subject to subsection (4).
- (4) Activities that fall within subsection (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
  - (b) the income derived from insurance activities of the worldwide group in the period of account.
- (5) In subsection (4) “income” means the gross income or net income that would be taken into account for the purposes of section 266 in calculating the UK or worldwide trading income of the worldwide group for the period of account.

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(6) In this section—

- “activities” includes buying, holding, managing and selling assets,
- “contract of insurance” [<sup>F68</sup>has the meaning given by section 64 of FA 2012], and
- “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.

#### Textual Amendments

**F68** Words in s. 269(6) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 242](#)

## 270 Relevant dealing in financial instruments

[<sup>F69</sup>(1) In this Chapter “financial instrument” means—

- (a) anything that is a financial instrument for any purpose of the FSA handbook, or
- (b) an instrument not within paragraph (a) that is an option, future or contract for differences.

(1A) In this section “option”, “future” and “contract for differences” have the same meaning as in Part 7 of CTA 2009 (see sections 580 to 582 of that Act).]

(2) For the purposes of this Chapter, 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 section “broker” includes any person offering to sell securities to, or purchase securities from, members of the public generally.

#### Textual Amendments

**F69** S. 270(1)(1A) substituted for s. 270(1) (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 9, 36\(1\)](#)

## 271 UK trading income of the worldwide group

(1) This section applies in relation to section 266 for calculating the UK trading income of the worldwide group for a period of account.

(2) The trading income for that period of a <sup>F70</sup>... company is the aggregate of—

- (a) the gross income calculated in accordance with subsection (3), and
- (b) the net income calculated in accordance with subsection (4).

(3) The income mentioned in subsection (2)(a) is the gross income—

- (a) arising from the activities of the <sup>F71</sup>... company (other than net-basis activities), and

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- (b) accounted for as such under generally accepted accounting practice, without taking account of any deductions (whether for expenses or otherwise).
- (4) The income mentioned in subsection (2)(b) is the net income arising from the net-basis activities of the <sup>F72</sup>... 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) Subsections (3) and (4) are subject to subsection (6).
- (6) If a proportion of an accounting period of a <sup>F73</sup>... 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 section, by that proportion.
- (7) Gross income or net income is to be disregarded for the purposes of subsection (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 [<sup>F74</sup>group securitisation company].
- (8) In this section “net-basis activity” means activity that is normally reported on a net basis in financial statements prepared in accordance with generally accepted accounting practice.

#### Textual Amendments

- F70** Words in s. 271(2) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F71** Words in s. 271(3) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F72** Words in s. 271(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F73** Words in s. 271(6) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(2\)](#), 36(1)
- F74** Words in s. 271(7) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 10\(3\)](#), 36(1)

## 272 Worldwide trading income of the worldwide group

- (1) This section applies in relation to section 266 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 subsection (3), and
  - (b) the net income calculated in accordance with subsection (4).
- (3) The income mentioned in subsection (2)(a) is the gross income—
  - (a) arising from the activities of the 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).



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- (4) The income mentioned in subsection (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 section “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 Part to financial statements of the worldwide group, and amounts disclosed in financial statements, see sections 346 to 349.

### 273 Foreign currency accounting

- (1) Subject to the following provisions of this section, references in this Chapter to an amount disclosed in a balance sheet of a <sup>F75</sup>... 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 by reference to the spot rate of exchange for that date.
- (2) Subsection (3) applies in relation to a period of account of the worldwide group if all the amounts disclosed in balance sheets (whether of <sup>F76</sup>... companies, or of the worldwide group) that are relevant to a calculation under this Chapter in relation to that period are expressed in the same currency (“the relevant foreign currency”) and that currency is not sterling.
- (3) If this subsection applies—
- (a) references in this Part to an amount disclosed in a balance sheet of a <sup>F77</sup>... company, or of the worldwide group, are to that amount expressed in the relevant foreign currency, and
  - (b) for the purposes of determining under section 262 the net debt amount of a company, subsection (3) of that section is to have effect as if the reference to the amount for the time being specified there (“the section 262(3) amount”) were read as a reference to the relevant amount.
- (4) For this purpose “the relevant amount” means the average of—
- (a) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's start date, and
  - (b) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's end date.

#### Textual Amendments

**F75** Words in s. 273(1) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)

**F76** Words in s. 273(2) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)

**F77** Words in s. 273(3)(a) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 11, 36\(1\)](#)



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[<sup>F78</sup>**273A Meaning of “group securitisation company”**

For the purposes of this Chapter, a company is a “group securitisation company” at any time during a period of account of the worldwide group if—

- (a) it is, at that time, a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010, and
- (b) its results are disclosed in the financial statements of the worldwide group for the period.]

**Textual Amendments**

**F78** S. 273A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 12, 36\(1\)](#)

## CHAPTER 3

### DISALLOWANCE OF DEDUCTIONS

**274 Application of Chapter and meaning of “total disallowed amount”**

- (1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies (“the relevant period of account”)—
  - (a) the tested expense amount (see Chapter 8), exceeds
  - (b) the available amount (see Chapter 9).
- (2) In this Chapter “the total disallowed amount” means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

**275 Meaning of “company to which this Chapter applies”**

References in this Chapter to a company to which this Chapter applies are to a company that is a relevant group company at any time during the relevant period of account.

[<sup>F79</sup>**275A Meaning of “dual resident investing company”**

For the purposes of this Chapter, a company is a “dual resident investing company” in relation to the relevant period of account if that period, or any part of it, is a period in respect of which the company is prevented, because of section 109(2) of CTA 2010 (restriction on losses etc surrenderable by dual resident), from surrendering losses under Chapter 2 of Part 5 of that Act (group relief).]

**Textual Amendments**

**F79** S. 275A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 13, 36\(1\)](#)

*Status: Point in time view as at 31/12/2012.*

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## 276 Appointment of authorised company for relevant period of account

- (1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.
- (2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.
- [<sup>F80</sup>(2A) In subsection (2), the reference to each company to which this Chapter applies does not include a company that is a dormant company throughout the relevant period of account.]
- (3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—
  - (a) about the form and manner in which an appointment may be made,
  - (b) about how an appointment may be revoked and the form and manner of such revocation,
  - (c) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (d) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (e) imposing time limits in relation to making or revoking an appointment,
  - (f) providing that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (g) about cases where a company is not a relevant group company at all times during the relevant period of account.
- (4) In this section “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 Part.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.

### Textual Amendments

**F80** S. 276(2A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 3

## 277 Meaning of “the reporting body”

In this Chapter “the reporting body” means—

- (a) if an appointment under section 276 has effect in relation to the relevant period of account, the company appointed under that section, and
- (b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.

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## **278 Statement of allocated disallowances: submission**

- (1) The reporting body must submit a statement (a “statement of allocated disallowances”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 280.

## **279 Statement of allocated disallowances: submission of revised statement**

- (1) If the reporting body has submitted a statement of allocated disallowances under section 278 or this section, it may submit a revised statement to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 280.
- (4) A statement submitted under this section—
  - (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

## **280 Statement of allocated disallowances: requirements**

- (1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279.
- (2) The statement must be signed—
  - (a) if an appointment under section 276 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or
  - (b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.
- (3) The statement must show—
  - (a) the tested expense amount,
  - (b) the available amount, and
  - (c) the total disallowed amount.
- (4) The statement must—
  - (a) list one or more companies to which this Chapter applies, and
  - (b) in relation to each listed company, specify one or more financing expense amounts for the relevant period of account that are to be disallowed, and give the relevant details in relation to each such amount.
- (5) For this purpose “the relevant details”, in relation to a financing expense amount are—
  - (a) which of conditions A, B and C in section 313 is met in relation to the amount, and

*Status: Point in time view as at 31/12/2012.*

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- (b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.

[<sup>F81</sup>(5A) An amount may not be specified in relation to a company under subsection (4)(b) if it accrues at a time at which the company is not a relevant group company.]

- (6) The sum of the amounts specified under subsection (4)(b) must equal the total disallowed amount.
- (7) In this section “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 Part.
- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.
- (9) For the meaning of “financing expense amount”, see Chapter 7.

#### Textual Amendments

**F81** S. 280(5A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 4

#### [<sup>F82</sup>280A Statement of allocated disallowances: dual resident investing companies

- (1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279 that (pursuant to section 280(4)) lists, and specifies an amount or amounts in relation to, a dual resident investing company.
- (2) The statement does not comply with section 280(4) unless—
  - (a) the companies listed pursuant to paragraph (a) of that provision include each company to which this Chapter applies that—
    - (i) is not a dual resident investing company, and
    - (ii) has one or more financing expense amounts for the relevant period of account, and
  - (b) the financing expense amounts specified pursuant to paragraph (b) of that provision include, in relation to each such company, each such financing expense amount.]

#### Textual Amendments

**F82** S. 280A inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 14, 36(1)

#### 281 Statement of allocated disallowances: effect

A financing expense amount of a company to which this Chapter applies that is specified in a statement of allocated disallowances under section 280(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

*Status: Point in time view as at 31/12/2012.*

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## 282 Company tax returns

- (1) This section applies if—
- (a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated disallowances under section 279—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

## 283 Power to make regulations about statement of allocated disallowances

The Commissioners may by regulations make further provision about a statement of allocated disallowances 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 circumstances in which a statement that is not received by the time specified in section 278(2) or 279(2) 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 section 280 is to be treated as if it did so comply.

## 284 Failure of reporting body to submit statement of allocated disallowances

- (1) This section applies if no statement of allocated disallowances is submitted under section 278 that complies with the requirements of section 280.

- (2) [<sup>F83</sup>Where a company to which this Chapter applies (“company A”) has a net financing deduction for the relevant period of account that is greater than nil, it] must reduce the amounts that it brings into account in relevant accounting periods in respect of financing expense amounts.

[<sup>F84</sup>(2A) The total of the reductions required to be made by company A because of subsection (2) is—

- (a) where company A or any other company to which this Chapter applies is a dual resident investing company, the amount determined in accordance with section 284A, and
- (b) otherwise, the amount determined in accordance with subsection (3).]

- (3) The [<sup>F85</sup>amount referred to in subsection (2A)(b)] is—

$$\frac{NFD}{TEA} \times TDA$$

where—

*Status: Point in time view as at 31/12/2012.*

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NFD is the net financing deduction of [<sup>F86</sup>company A] for the relevant period of account (see section 329(2)),

TEA is the tested expense amount for the relevant period of account (see section 329(1)), and

TDA is the total disallowed amount (see section 274(2)).

- (4) The particular financing expense amounts that must be reduced, and the amounts by which they must be reduced, must be determined in accordance with regulations made by the Commissioners.
- (5) Regulations under this section may, in particular, include any of the following—
  - (a) provision conferring a discretion on a company required to make reductions under this section as to the particular financing expense amounts that are to be reduced,
  - (b) provision requiring a company required to make reductions under this section to notify another relevant group company of the particular reductions made, and
  - (c) provision as to the times by which such notices must be sent and as to information that must accompany such notices.

#### Textual Amendments

**F83** Words in s. 284(2) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 15\(2\), 36\(1\)](#)

**F84** S. 284(2A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 15\(3\), 36\(1\)](#)

**F85** Words in s. 284(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 15\(4\)\(a\), 36\(1\)](#)

**F86** Words in s. 284(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 5 paras. 15\(4\)\(b\), 36\(1\)](#)

#### [<sup>F87</sup>Section 284: supplementary

- (1) This section contains provision for determining the total of the reductions required to be made by company A because of section 284(2) in a case in which company A, or any other company to which this Chapter applies, is a dual resident investing company.

- (2) If company A is not a dual resident investing company, the total of the reductions required to be made by company A is—

$$\text{NFD} - \text{TEA} \times \text{TDA}$$

or, if lower, NFD.

- (3) If company A is a dual resident investing company, the total of the reductions required to be made by company A is—

$$\text{NFD} \times (\text{TDA} - (\text{TEA} \times \text{X}))$$

or, if that amount is negative or zero, nil.

- (4) In subsections (2) and (3)—

NFD, TEA and TDA have the same meaning as in section 284(3), and

X is the total of the net financing deductions of all the companies to which this Chapter applies that are dual resident investing companies.]

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

### Textual Amendments

**F87** S. 284A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 16, 36\(1\)](#)

## 285 Powers to make regulations in relation to reductions under section 284

- (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 284 to reduce the amounts that it brings into account in respect of financing expense amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.
- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 284 of a financing expense amount.
- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 284.
- (6) In this section “specified” means specified in regulations under this section.

## CHAPTER 4

### EXEMPTION OF FINANCING INCOME

## 286 Application of Chapter and meaning of “total disallowed amount”

- (1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies (“the relevant period of account”)—
  - (a) the tested expense amount (see Chapter 8), exceeds
  - (b) the available amount (see Chapter 9).
- (2) In this Chapter the “total disallowed amount” means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

## 287 Meaning of “company to which this Chapter applies”

References in this Chapter to a company to which this Chapter applies are to a company that is a UK group company at any time during the relevant period of account.

*Status: Point in time view as at 31/12/2012.*

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## 288 Appointment of authorised company for relevant period of account

- (1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.
- (2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.
- [<sup>F88</sup>(2A) In subsection (2), the reference to each company to which this Chapter applies does not include a company that is a dormant company throughout the relevant period of account.]
- (3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—
  - (a) about the form and manner in which an appointment may be made or revoked,
  - (b) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
  - (c) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
  - (d) imposing time limits in relation to making or revoking an appointment,
  - (e) that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
  - (f) about cases where a company does not meet condition A in section 345, or is not a member of the worldwide group, at all times during the relevant period of account.
- (4) In this section “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 Part.
- (5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.

### Textual Amendments

**F88** S. 288(2A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 5

## 289 Meaning of “the reporting body”

In this Chapter “the reporting body” means—

- (a) if an appointment under section 288 has effect in relation to the relevant period of account, the company appointed under that section, and
- (b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.



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## **290 Statement of allocated exemptions: submission**

- (1) The reporting body must submit a statement (a “statement of allocated exemptions”) in relation to the relevant period of account to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 292.

## **291 Statement of allocated exemptions: submission of revised statement**

- (1) If the reporting body has submitted a statement of allocated exemptions under section 290 or this section, it may submit a revised statement to HMRC.
- (2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.
- (3) A statement submitted under this section must comply with the requirements of section 292.
- (4) A statement submitted under this section—
  - (a) must indicate the respects in which it differs from the previous statement, and
  - (b) supersedes the previous statement.

## **292 Statement of allocated exemptions: requirements**

- (1) This section applies in relation to a statement of allocated exemptions submitted under section 290 or 291.
- (2) The statement must be signed—
  - (a) if an appointment under section 288 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or
  - (b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.
- (3) The statement must show—
  - (a) the tested expense amount,
  - (b) the available amount, and
  - (c) the total disallowed amount.
- (4) The statement must—
  - (a) list one or more companies to which this Chapter applies, and
  - (b) in relation to each listed company, specify one or more financing income amounts for the relevant period of account that are to be exempted, and give the relevant details in relation to each such amount.
- (5) For this purpose “the relevant details” in relation to a financing income amount are—
  - (a) which of conditions A, B [F89], C and D] in section 314 is met in relation to the amount, and

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- (b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.

[<sup>F90</sup>(5A) An amount may not be specified in relation to a company under subsection (4)(b) if it accrues at a time at which the company is not a UK group company.]

- (6) The sum of the amounts specified under subsection (4)(b) must not exceed the lower of—
- (a) the total disallowed amount, and
  - (b) the tested income amount (see Chapter 8).
- (7) In this section “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 Part.
- (8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this section as they apply for the purposes of that section.
- (9) For the meaning of “financing income amount”, see Chapter 7.

#### Textual Amendments

**F89** Words in s. 292(5)(a) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 17, 36\(1\)](#)

**F90** [S. 292\(5A\)](#) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 6](#)

### 293 Statement of allocated exemptions: effect

A financing income amount of a company to which this Chapter applies that is specified in a statement of allocated exemptions under section 292(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

### 294 Company tax returns

- (1) This section applies if—
- (a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and
  - (b) as a result of the submission of a revised statement of allocated exemptions under section 291—
    - (i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or
    - (ii) any other information contained in the return is incorrect.
- (2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

*Status: Point in time view as at 31/12/2012.*

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## 295 Power to make regulations about statement of allocated exemptions

The Commissioners may by regulations make further provision about a statement of allocated exemptions 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 circumstances in which a statement that is not received by the time specified in section 290(2) or 291(2) 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 section 292 is to be treated as if it did so comply.

## 296 Failure of reporting body to submit statement of allocated exemptions

- (1) This section applies if no statement of allocated exemptions is submitted under section 290 that complies with the requirements of section 292.
- (2) Subject to the following provisions of this section, each financing income amount for the relevant period of account of each company to which this Chapter applies is to be reduced to nil.

[<sup>F91</sup>(2A) Subsection (2) does not apply to a financing income amount if it accrues to the company in question at a time when it is not a UK group company.]

- (3) In this section “unrestricted reduction” means a reduction of a financing income amount for the relevant period of account of a company to which this Chapter applies, determined in accordance with subsection (2).
- (4) Subsection (5) applies if—
  - (a) the total of the unrestricted reductions, exceeds
  - (b) the lower of—
    - (i) the total disallowed amount, and
    - (ii) the tested income amount.
- (5) Each unrestricted reduction is to be reduced by—

$$\frac{UR}{TUR} \times X$$

where—

UR is the unrestricted reduction in question,  
TUR is the total of the unrestricted reductions, and  
X is the excess mentioned in subsection (4).

### Textual Amendments

- F91** S. 296(2A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 7

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*Status: Point in time view as at 31/12/2012.*

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## **297 Power to make regulations in relation to reductions under section 296**

- (1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 296 to reduce the amounts that it brings into account in respect of financing income amounts for the relevant period of account (“a company required to make default reductions”) has sufficient information to determine their amount.
- (2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.
- (3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.
- (4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 296 of a financing income amount.
- (5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 296.
- (6) In this section “specified” means specified in regulations under this section.

## **298 Balancing payments between group companies: no tax charge or relief**

- (1) This section applies if—
  - (a) one or more financing income amounts of a company (“company A”) for the relevant period of account are—
    - (i) because of section 293, not brought into account, or
    - (ii) because of section 296, reduced,
  - (b) one or more financing expense amounts of another company (“company B”) for the relevant period of account are—
    - (i) because of section 281, not brought into account, or
    - (ii) because of section 284, reduced,
  - (c) company A makes one or more payments (“the balancing payments”) to company B, and
  - (d) the sole or main reason for making the balancing payments is that the conditions in paragraphs (a) and (b) are met.
- (2) To the extent that the sum of the balancing payments does not exceed the amount specified in subsection (3), those payments—
  - (a) are not to be taken into account in computing profits or losses of either company A or company B for the purposes of corporation tax, and
  - (b) are not to be regarded as distributions for any of the purposes of the Corporation Tax Acts.
- (3) The amount mentioned in subsection (2) is the lower of—
  - (a) the sum of the financing income amounts mentioned in subsection (1)(a), and
  - (b) the sum of the financing expense amounts mentioned in subsection (1)(b).

*Status: Point in time view as at 31/12/2012.*

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## **[<sup>F92</sup>298A Application of Chapter to financing income amounts determined under section 314A**

- (1) The Commissioners may by regulations amend this Chapter—
  - (a) to enable a financing income amount determined in accordance with section 314A for the relevant period of account (or a proportion of such an amount so determined) to be specified in a statement of allocated exemptions under section 292(4)(b), and
  - (b) to require, where a financing income amount so determined (or a proportion of such an amount so determined) is specified in such a statement, the sum charged on the company as mentioned in section 314A(1)(a) to be re-determined at step 5 in section 371BC(1) on the basis set out in subsection (2) below.
- (2) The basis referred to in subsection (1)(b) is—
  - (a) the relevant finance profits (see section 314A(1)(d)) are to be left out of the CFC's chargeable profits mentioned in paragraph (a) at step 5 in section 371BC(1), and
  - (b) the CFC's creditable tax mentioned in paragraph (b) at that step is to be reduced so far as it is just and reasonable for it to be reduced having regard to the amounts left out of the CFC's chargeable profits.
- (3) For a case where only a proportion (“X%”) of a financing income amount is specified in a statement of allocated exemptions under section 292(4)(b), in subsection (2)(a) the reference to the relevant finance profits is to be read as a reference to X% of those profits.
- (4) The Commissioners may by regulations amend this Chapter to require, where a financing income amount determined in accordance with section 314A for the relevant period of account is reduced under section 296, the sum charged on the company as mentioned in section 314A(1)(a) to be re-determined in accordance with provision made by regulations under subsection (1)(b) as if the proportion of the financing income amount represented by the amount of the reduction were specified in a statement of allocated exemptions under section 292(4)(b).
- (5) The Commissioners may by regulations amend this Part or Part 9A in consequence of provision made by regulations under subsection (1) or (4).]

### **Textual Amendments**

**F92** S. 298A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 43](#)

## **CHAPTER 5**

### **INTRA-GROUP FINANCING INCOME WHERE PAYER DENIED DEDUCTION**

#### **299 Tax exemption for certain financing income received from EEA companies**

- (1) A financing income amount of a company that is a member of the worldwide group (“the recipient”) is not to be brought into account for the purposes of corporation tax if—

*Status: Point in time view as at 31/12/2012.*

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- (a) it arises as a result of a payment by another company that is a member of the worldwide group (“the payer”),
  - (b) the payment is received during a period of account of the worldwide group to which this Part applies, and
  - (c) conditions A, B and C are met.
- (2) Condition A is that, at the time the payment is received, the payer is a relevant associate of the recipient (see section 300).
- (3) Condition B is that, at the time the payment is received—
- (a) the payer is tax-resident in an EEA territory (see section 301), and
  - (b) the payer is liable to a tax of that territory that is chargeable by reference to profits, income or gains arising to the payer.
- (4) Condition C is that—
- (a) qualifying EEA tax relief for the payment is not available to the payer in the period in which the payment is made (“the current period”) or any previous period (see section 302), and
  - (b) qualifying EEA tax relief for the payment is not available to the payer in any period after the current period (see section 303).
- (5) For the meaning of “financing income amount”, see section 305.

### **300 Meaning of “relevant associate”**

For the purposes of this Chapter, the payer is a “relevant associate” of the recipient if—

- (a) the payer is a parent of the recipient,
- (b) the payer is a 75% subsidiary of the recipient, or
- (c) the payer is a 75% subsidiary of a parent of the recipient.

### **301 Meaning of “tax-resident” and “EEA territory”**

- (1) For the purposes of this Chapter, the payer is “tax-resident” in a territory if it is liable, under the law of that territory, to tax by reason of domicile, residence or place of management.
- (2) In this Chapter “EEA territory” means a territory outside the United Kingdom that is within the European Economic Area.

### **302 Qualifying EEA tax relief for payment in current or previous period**

- (1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in the current period or a previous period if conditions A and B are met in relation to the payment.
- (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—
- (a) arise to the payer in the current period or any previous period, and
  - (b) are chargeable to any tax of the United Kingdom or an EEA territory for the current period or any previous period.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

- (3) Condition B is that no relief determined by reference to the payment can be given in the current period or any previous period for the purposes of any tax of the United Kingdom or an EEA territory by—
  - (a) the payment of a credit,
  - (b) the elimination or reduction of a tax liability, or
  - (c) any other means of any kind.
- (4) Conditions A and B are not met in relation to the payment unless every step is taken (whether by the payer or any other person) to secure that deductions are taken into account as mentioned in subsection (2) and reliefs are given as mentioned in subsection (3).
- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—
  - (a) this Part, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
  - (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means—
    - (i) rules that, on the passing of FA 2009, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
    - (ii) any rules in the same or equivalent terms.

### **303 Qualifying EEA tax relief for payment in future period**

- (1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in a period after the current period if conditions A and B are met in relation to the payment.
- (2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—
  - (a) might arise to the payer in any period after the current period, and
  - (b) would, if they did so arise, be chargeable to any tax of the United Kingdom or an EEA territory for any period after the current period.
- (3) Condition B is that no relief determined by reference to the payment can be given in any period after the current period for the purposes of any tax of the United Kingdom or an EEA territory by—
  - (a) the payment of a credit,
  - (b) the elimination or reduction of a tax liability, or
  - (c) any other means of any kind.
- (4) The question whether a deduction can be taken into account as mentioned in subsection (2) or a relief can be given as mentioned in subsection (3) is to be determined by reference to the position immediately after the end of the current period.

*Status: Point in time view as at 31/12/2012.*

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- (5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—
- (a) this Part, or
  - (b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).
- (6) For this purpose—
- (a) arrangements are “double taxation arrangements” if they are arrangements made between any two territories with a view to affording relief from double taxation, and
  - (b) “associated enterprise rules” means—
    - (i) rules that, on the passing of FA 2009, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or
    - (ii) any rules in the same or equivalent terms.

### **304 References to tax of a territory**

- (1) References in this Chapter to a tax of the United Kingdom are to income tax or corporation tax.
- (2) References in this Chapter to a tax of a territory outside the United Kingdom are to a tax chargeable under the law of that territory that—
  - (a) is charged on income and corresponds to income tax, or
  - (b) is charged on income or chargeable gains or both and corresponds to corporation tax.
- (3) For the purposes of this section, a tax chargeable under the law of a territory outside the United Kingdom does not fail to correspond to income tax or corporation tax just because—
  - (a) it is chargeable under the law of a province, state or other part of a country, or
  - (b) it is levied by or on behalf of a municipality or other local body.

### **305 Financing income amounts of a company**

- (1) References in this Chapter to a “financing income amount” of a company are (subject to subsection (6)) to any amount that meets condition A, B <sup>[F93]</sup>, C or D].
- (2) Condition A is that the amount is a credit that—
  - (a) would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded credit.
- (3) A credit is “excluded” if it is in respect of—
  - (a) the reversal of an impairment loss,
  - (b) an exchange gain, or



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- (c) a profit from a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of the financing income implicit in amounts received under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of the financing income receivable on debt factoring, or any similar transaction.
- [<sup>F94</sup>(5A) Condition D is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of income that—
- (a) is receivable from another company, and
  - (b) is in consideration of the provision of a guarantee of any borrowing of that other company.]
- (6) The provisions of Chapter 7 apply in relation to an amount that is a financing income amount of a company because of meeting condition A, B [<sup>F95</sup>, C or D] in this section as they apply in relation to an amount that is a financing income amount of a relevant group company because of meeting condition A, B [<sup>F95</sup>, C or D] in section 314.
- [<sup>F96</sup>(7) In this section the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—
- “exchange gain”,
  - “impairment loss”, and
  - “related transaction”.]

#### Textual Amendments

- F93** Words in s. 305(1) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 18(2), 36(1)
- F94** S. 305(5A) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 18(3), 36(1)
- F95** Words in s. 305(6) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 18(4), 36(1)
- F96** S. 305(7) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 18(5), 36(1)

## CHAPTER 6

### TAX AVOIDANCE

#### [<sup>F97</sup>305A Schemes preventing this Part applying to a large group

- (1) This section applies in relation to a period of account of a large group of entities if, apart from this section, this Part would not apply in relation to that period because of a failure by the group to meet the requirement of section 337(1)(b) (the worldwide group must contain one or more relevant group companies) throughout that period.
- (2) If conditions A and B are met, this Part applies to the group as it would have applied had the scheme mentioned in condition A not been entered into.
- (3) Condition A is that—

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- (a) at or before the end of the period of account, a scheme is entered into, and
  - (b) the main purpose, or one of the main purposes, for which a person becomes or is party to the scheme is to secure that the requirement of section 337(1)(b) is not met by the group throughout that period.
- (4) Condition B is that the scheme is not an excluded scheme.]

#### Textual Amendments

**F97** S. 305A inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 8](#)

### 306 Schemes involving manipulation of rules in Chapter 2

- (1) A period of account of the worldwide group that, apart from this section, is not within section 261(1) is treated as within that provision if conditions A, B and C are met.
- (2) Condition A is that—
  - (a) at any time before the end of the period, a scheme is entered into, and
  - (b) if the scheme had not been entered into, the period would have been within section 261(1).
- (3) Condition B is that the main purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the period is not within section 261(1).
- (4) Condition C is that the scheme is not an excluded scheme.

### 307 Schemes involving manipulation of rules in Chapters 3 and 4

- (1) If conditions A, B and C are met in relation to a period of account of the worldwide group (“the relevant period of account”), the tested expense amount, the tested income amount and the available amount for the period are to be calculated in accordance with section 309.
- (2) Condition A is that—
  - (a) at any time before the end of the relevant period of account, a scheme is entered into, and
  - (b) the main purpose, or one of the main purposes, of any party to the scheme on entering into it is to secure that the amount of the relevant net deduction (within the meaning given by section 308) is lower than it would be if that amount were calculated in accordance with section 309.
- (3) Condition B is that a result of the scheme is that—
  - (a) the sum of the profits of UK group companies that—
    - (i) arise in relevant accounting periods, and
    - (ii) are chargeable to corporation tax,
 is less than it would be if that sum were determined in accordance with section 309, or
  - (b) the sum of the losses of UK group companies that—
    - (i) arise in relevant accounting periods (other than any taken into account in calculating profits within paragraph (a)), and

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- (ii) are capable of being a carried-back amount or a carried-forward amount (see section 310),  
is higher than it would be if that sum were determined in accordance with section 309.
- (4) Condition C is that the scheme is not an excluded scheme.
- (5) If—
  - (a) a profit or loss arises in an accounting period of a UK group company, and
  - (b) a proportion of that period does not fall within the relevant period of account, the profit or loss is to be reduced, for the purposes of condition B, by the same proportion.

### **308 Meaning of “relevant net deduction”**

- (1) In section 307(2) the “relevant net deduction” means—
  - (a) the amount by which the total disallowed amount exceeds the tested income amount, or
  - (b) if the total disallowed amount does not exceed the tested income amount, nil.
- (2) In this section the “total disallowed amount” means—
  - (a) the amount by which the tested expense amount exceeds the available amount, or
  - (b) if the tested expense amount does not exceed the available amount, nil.

### **309 Calculation of amounts**

- (1) References in section 307 to the calculation of any amount or sum in accordance with this section are to the calculation of that amount or sum on the following assumptions.
- (2) The assumptions are that—
  - (a) the scheme in question was not entered into, and
  - (b) instead, anything that it is more likely than not would have been done or not done had this Part not had effect in relation to the relevant period of account, was done or not done.

### **310 Meaning of “carried-back amount” and “carried-forward amount”**

- (1) In section 307 “carried-back amount” means—
  - (a) an amount carried back under section 389(2) of CTA 2009 (deficits of insurance companies),
  - (b) an amount carried back as a result of a claim under section 459(1)(b) of CTA 2009 (non-trading deficits from loan relationships), or
  - (c) an amount carried back under section 37(3)(b) of CTA 2010 (relief for trade losses against total profits).
- (2) In section 307 “carried-forward amount” means—
  - (a) an amount carried forward under [F98 section 73 or 93 of FA 2012 for use at step 5 in section 76 of that Act (the I - E basis for insurance companies) ] ,
  - F99(b) .....

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- (c) an amount carried forward under section 8(1)(b) of TCGA 1992 (allowable losses),
- (d) an amount carried forward under section 391(2) of CTA 2009 (deficits of insurance companies),
- (e) an amount carried forward under section 457(3) of CTA 2009 (non-trading deficits from loan relationships),
- (f) an amount carried forward under section 753(3) of CTA 2009 (non-trading loss on intangible fixed assets),
- (g) an amount carried forward under section 925(3) of CTA 2009 (patent income: relief for expenses),
- (h) an amount carried forward under section 1223 of CTA 2009 (expenses of management and other amounts),
- (i) an amount carried forward under section 45(4) of CTA 2010 (carry forward of trade loss against subsequent trade profit),
- (j) an amount carried forward under section 62(5) of CTA 2010 (relief for losses made UK property business),
- (k) an amount carried forward under section 63(3) of CTA 2010 (company with investment business ceasing to carry on UK property business),
- (l) an amount carried forward under section 66(3) of CTA 2010 (relief for losses made in overseas property business), or
- (m) an amount carried forward under section 91(6) of CTA 2010 (relief for losses from miscellaneous transactions).

#### Textual Amendments

**F98** Words in s. 310(2)(a) substituted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 16 para. 243(a)

**F99** S. 310(2)(b) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), Sch. 16 para. 243(b)

### 311 Schemes involving manipulation of rules in Chapter 5

- (1) This section applies to a financing income amount of a company received during a period of account of the worldwide group if—
  - (a) apart from this section, the financing income amount would, because of section 299, not be brought into account for the purposes of corporation tax, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that, at any time before the financing income amount is received, a scheme is entered into that secures that any of the conditions in subsections (2) to (4) of section 299 (“the relevant section 299 condition”) is met in relation to the amount.
- (3) Condition B is that the purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the relevant section 299 condition is met.
- (4) Condition C is that the scheme is not an excluded scheme.
- (5) If this section applies to a financing income amount, the relevant section 299 condition is treated as not met in relation to the amount.
- (6) Section 305 (meaning of references to a “financing income amount” of a company) applies for the purposes of this section.

*Status: Point in time view as at 31/12/2012.*

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### **312 Meaning of “scheme” and “excluded scheme”**

- (1) For the purposes of this Chapter, “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.
- (2) For the purposes of this Chapter, a scheme is “excluded” if it is of a description specified in regulations made by the Commissioners.
- (3) Regulations under subsection (2) may make different provision for different purposes.

## **CHAPTER 7**

### “FINANCING EXPENSE AMOUNT” AND “FINANCING INCOME AMOUNT”

### **313 The financing expense amounts of a company**

- (1) References in this Part to a “financing expense amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.
- (2) Condition A is that the amount is a debit that—
  - (a) would, apart from this Part, be brought into account in a relevant accounting period of the company,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded debit.
- (3) A debit is “excluded” if it is in respect of—
  - (a) an impairment loss,
  - (b) an exchange loss, or
  - (c) a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost implicit in payments made under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing cost payable on debt factoring, or any similar transaction.
- (6) If—
  - (a) a debit or other amount would, apart from this Part, be brought into account in an accounting period, and
  - (b) a proportion of that period does not fall within the period of account of the worldwide group,the debit or other amount is to be reduced, for the purposes of this section, by <sup>[F100]</sup>such proportion as is just and reasonable].

<sup>[F101]</sup>(6A) An amount may be reduced to nil under subsection (6).]

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(7) This section is subject to sections 316 to 327.

#### Textual Amendments

**F100** Words in s. 313(6) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 9(2)

**F101** S. 313(6A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 9(3)

### 314 The financing income amounts of a company

- (1) References in this Part (except in Chapter 5 and section 311) to a “financing income amount” of a company for a period of account of the worldwide group are to any amount that meets condition A, B<sup>F102</sup>, C or D<sup>F103</sup> or that is determined in accordance with section 314A ] .
- (2) Condition A is that the amount is a credit that—
  - (a) would, apart from this Part, be brought into account in a relevant accounting period of the company,
  - (b) would be so brought into account in respect of a loan relationship—
    - (i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or
    - (ii) under Part 5 of that Act (other loan relationships), and
  - (c) is not an excluded credit.
- (3) A credit is “excluded” if it is in respect of—
  - (a) the reversal of an impairment loss,
  - (b) an exchange gain, or
  - (c) a profit from a related transaction.
- (4) Condition B is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income implicit in amounts received under finance leases.
- (5) Condition C is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of the financing income receivable on debt factoring, or any similar transaction.
- <sup>F104</sup>(5A) Condition D is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of income that—
  - (a) is receivable from another company, and
  - (b) is in consideration of the provision of a guarantee of any borrowing of that other company.]
- (6) If—
  - (a) a credit or other amount would, apart from this Part, be brought into account in an accounting period, and

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(b) a proportion of that period does not fall within the period of account of the worldwide group,

the credit or other amount is to be reduced, for the purposes of this section, by [<sup>F105</sup>such proportion as is just and reasonable].

[<sup>F106</sup>(6A) An amount may be reduced to nil under subsection (6).]

(7) This section is subject to sections 316 to 327.

#### Textual Amendments

**F102** Words in s. 314(1) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 19(2), 36(1)

**F103** Words in s. 314(1) inserted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 20 para. 44

**F104** S. 314(5A) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 19(3), 36(1)

**F105** Words in s. 314(6) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 10(2)

**F106** S. 314(6A) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), Sch. 5 para. 10(3)

#### [<sup>F107</sup>314A] The financing income amounts of a chargeable company under Part 9A

(1) This section applies if—

- (a) a sum is charged on a company at step 5 in section 371BC(1) (controlled foreign companies: charging the CFC charge),
- (b) the relevant corporation tax accounting period (as defined in section 371BC(3)) is a relevant accounting period of the company in relation to a period of account of the worldwide group,
- (c) the CFC's accounting period in relation to which the sum is charged ends in the period of account of the worldwide group, and
- (d) the CFC's chargeable profits mentioned in paragraph (a) at step 5 in section 371BC(1) include amounts (“the relevant finance profits”) which fall only within Chapter 5 or 6 of Part 9A or which are qualifying loan relationship profits within the meaning of Chapter 9 of Part 9A.

(2) An amount equal to P% of the relevant finance profits is to be taken to be a financing income amount of the company for the period of account of the worldwide group.

(3) “P%” has the meaning given by section 371BC(3), subject to sections 371BG(3)(a) and 371BH(3)(b).

(4) In subsection (1)(d) the reference to amounts which fall within Chapter 5 or 6 of Part 9A or which are qualifying loan relationship profits is limited to amounts—

- (a) which so fall or which are such profits by virtue of section 297 or 299 of CTA 2009 (but not, in the case of section 299, as applied by section 574 of that Act), and
- (b) which are not excluded credits (as defined in section 314(3) above).]

#### Textual Amendments

**F107** S. 314A inserted (17.7.2012) by Finance Act 2012 (c. 14), Sch. 20 para. 45

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### 315 Interpretation of sections 313 and 314

In sections 313 and 314 the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—

- “exchange gain” and “exchange loss”,
- <sup>F108</sup> ...
- “impairment loss”, and
- “related transaction”.

#### Textual Amendments

**F108** Word in s. 315 omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 20, 36\(1\)](#)

### 316 Group treasury companies

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
  - (a) a financing expense amount of a group treasury company because of meeting condition A, B or C in section 313, or
  - (b) a financing income amount of a group treasury company because of meeting condition A, B [<sup>F109</sup>, C or D] in section 314.
- (2) The relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company, but only if that company makes an election for the purposes of this section in respect of the relevant period.
- (3) An election under this section must be made within 3 years after the end of the relevant period.
- <sup>F110</sup>(4) .....
- (5) A company is a group treasury company in the relevant period if conditions 1, 2 and 3 are met.
- (6) Condition 1 is that the company is a member of the worldwide group.
- (7) Condition 2 is that the company undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities).
- [<sup>F111</sup>(8) Condition 3 is that at least 90% of the relevant income of the company for the relevant period is group treasury revenue.]
- (9) For the purposes of this section, a company undertakes treasury activities for the worldwide group in the relevant period if, in that period, it does one or more of the following things in relation to, or on behalf of, the worldwide group or any of its members—
  - (a) managing surplus deposits of money or overdrafts,
  - (b) making or receiving deposits of money,
  - (c) lending money,
  - (d) subscribing for or holding shares in another company which is a UK group company and a group treasury company,



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- (e) investing in debt securities, and
  - (f) hedging assets, liabilities, income or expenses.
- (10) For the purposes of this section “group treasury revenue”, in relation to a company, means revenue—
- (a) arising from the treasury activities that the company undertakes for the worldwide group, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise).
- (11) But revenue consisting of a dividend or other distribution is not group treasury revenue unless it is a dividend or distribution from a company that is, in the relevant period—
- (a) a UK group company, and
  - (b) a group treasury company.
- (12) In this section—
- “debt security” has the same meaning as in the FSA Handbook,
  - “relevant income”, in relation to a company, means income—
- (a) arising from the activities of the company, and
  - (b) accounted for as such under generally accepted accounting practice, before any deduction (whether for expenses or otherwise), and
- “relevant period” means the period of account of the worldwide group to which the relevant amount relates.

#### Textual Amendments

- F109** Words in s. 316(1)(b) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 21\(2\), 36\(1\)](#)
- F110** [S. 316\(4\)](#) omitted (with effect in accordance with [Sch. 5 para. 22\(2\)](#) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 11](#)
- F111** [S. 316\(8\)](#) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 21\(3\), 36\(1\)](#)

### 317 Real estate investment trusts

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company because of meeting condition A in section 313, or
  - (b) a financing income amount of a company because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if the finance arrangement is one to which section 211 of CTA 2009 does not apply because of section 599(3)(a) of CTA 2010.

### [<sup>F112</sup>317A Companies with permanent establishments profits election

- (1) This section applies if, apart from this section, an amount is a financing expense amount or a financing income amount of a company in relation to which an election under section 18A of CTA 2009 has effect.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

- (2) It is treated as not being a financing expense amount or a financing income amount of the company if and to the extent that it is left out of account under that section.]

**Textual Amendments**

**F112** S. 317A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 13 paras. 30, 31](#)

**318 Companies engaged in oil extraction activities**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company because of meeting condition A or condition B in section 313, or
  - (b) a financing income amount of a company because of meeting condition A or condition B in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if conditions 1 and 2 are met.
- (3) Condition 1 is that the company is treated, in the accounting period in which the amount is brought into account, as carrying on a ring fence trade (see section 277 of CTA 2010).
- (4) Condition 2 is that the amount falls to be brought into account in calculating the profits of that trade for that accounting period.

**[<sup>F113</sup>318A Industrial and provident societies**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is—
- (a) a financing expense amount of a company because of meeting condition A in section 313, or
  - (b) a financing income amount of a company because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if it is such an amount only because of section 499 of CTA 2009 (industrial and provident society payments treated as interest under loan relationship).]

**Textual Amendments**

**F113** S. 318A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 22, 36\(1\)](#)

**319 Intra-group short-term finance: financing expense**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.

*Status: Point in time view as at 31/12/2012.*

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- (3) Such an election may not be made unless conditions 1 and 2 are met.
- (4) Condition 1 is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group.
- (6) An election under this section may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.
- (7) An election under this section is irrevocable.
- (8) In this section “short-term loan relationship” has the meaning given in section 321.

### **320 Intra-group short-term finance: financing income**

- (1) This section applies if—
  - (a) under section 319, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 319.

### **321 Short-term loan relationships**

- (1) For the purposes of section 319, the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group (“the relevant period”) if—
  - (a) regulations made by the Commissioners provide for it to be so, or
  - (b) condition A or B is met.
- (2) Condition A is that the finance arrangement does not terminate during the relevant period and—
  - (a) to the extent that the finance arrangement provides for the creation of money debt, its terms require all money debt created under it to be settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the finance arrangement is otherwise a loan relationship, its terms provide for it to terminate within 12 months of its coming into force.
- (3) Condition B is that the finance arrangement terminates during, or after the end of, the relevant period and—
  - (a) to the extent that the relationship provided for the creation of money debt, all money debt created under it was settled within 12 months of money debt first being created under it, and
  - (b) to the extent that the relationship was otherwise a loan relationship, it terminated within 12 months of its coming into force.

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- (4) The Treasury may, by regulations, make provision about <sup>F114</sup>... circumstances in which the finance arrangement is to be taken not to be a short-term loan relationship as respects—
- (a) the relevant period, or
  - (b) any part or parts of the relevant period.
- (5) Regulations under subsection (4) may include provision for the finance arrangement to be taken never to have been a short-term loan relationship as respects the relevant period or the part or parts of it.
- (6) Regulations under subsection (4) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

<sup>F115</sup>(7) .....

#### **Textual Amendments**

**F114** Word in s. 321(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 23\(a\)](#), 36(1)

**F115** S. 321(7) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 23\(b\)](#), 36(1)

### **322 Stranded deficits in non-trading loan relationships: financing expense**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless each of conditions 1 to 4 is met.
- (4) Condition 1 is that company A and the other party to the loan relationship (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that company B—
  - (a) is resident in the United Kingdom, or
  - (b) 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.
- (6) Condition 3 is that, under section 457 of CTA 2009, company B carries forward an amount of non-trading deficit and sets it off against non-trading profits of an accounting period that falls wholly or partly within the period of account of the worldwide group.
- (7) Condition 4 is that the amount of non-trading deficit carried forward and set off is equal to, or greater than, the relevant amount.
- (8) An election under this section may only be made—
  - (a) jointly by company A and company B, and

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- (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

### **323 Stranded deficits in non-trading loan relationships: financing income**

- (1) This section applies if—
  - (a) under section 322, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 322.

### **324 Stranded management expenses in non-trading loan relationships: financing expense**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company (“company A”) because of meeting condition A in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.
- (3) Such an election may not be made unless each of conditions 1 to 5 is met.
- (4) Condition 1 is that company A and the other party to the finance arrangement (“company B”) are both members of the worldwide group.
- (5) Condition 2 is that company B is a company with investment business (within the meaning of Part 16 of CTA 2009) and—
  - (a) is resident in the United Kingdom, or
  - (b) 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.
- (6) Condition 3 is that company B is allowed a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) in respect of an accounting period that falls wholly or partly within the period of account of the worldwide group (“the relevant period”).
- (7) Condition 4 is that the amount of the deduction allowed is equal to, or greater than, the relevant amount.
- (8) Condition 5 is that the calculation of company B's total profits for the relevant period for the purposes of corporation tax results in a loss if company B's credit is not included in that calculation.
- (9) An election under this section may only be made—
  - (a) jointly by company A and company B, and
  - (b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

*Status: Point in time view as at 31/12/2012.*

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- (10) In this section “company B's credit” means the credit to company B that arises from the debit to company A as a result of which condition A in section 313 is met.

### **325 Stranded management expenses in non-trading loan relationships: financing income**

- (1) This section applies if—
- (a) under section 324, the relevant amount is treated as not being a financing expense amount of company A, and
  - (b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.
- (2) The relevant amount is treated as not being a financing income amount of company B.
- (3) In this section “company A” and “company B” have the same meaning as in section 324.

### **326 Charities**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company because of meeting condition A, B or C in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is a charity.
- (3) In this section—
- <sup>F116</sup> ...
- “creditor” means—
- (a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and
  - (b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises.

#### **Textual Amendments**

**F116** Words in s. 326(3) omitted (8.3.2012 for accounting periods beginning on or after 1.4.2012) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 28, 34\(2\)](#); [S.I. 2012/736, art. 22](#)

### **327 Educational and public bodies**

- (1) This section applies if, apart from this section, an amount (“the relevant amount”) is a financing expense amount of a company because of meeting condition A, B or C in section 313.
- (2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is—
- (a) a designated educational establishment,
  - (b) a health service body,
  - (c) a local authority, <sup>F117</sup> ...

*Status: Point in time view as at 31/12/2012.*

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- [<sup>F118</sup>(ca) a relevant public body, or]
- (d) a person that is prescribed, or is of a description of persons prescribed, in an order made by the Commissioners for the purposes of this section.
- (3) The Commissioners may not prescribe a person, or a description of persons, for the purposes of this section unless they are satisfied that the person, or each of the persons within the description, has functions some or all of which are of a public nature.
- (4) In this section—
- “creditor” means—
- (a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and
- (b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises, “designated educational establishment” has the same meaning as in section 105 of CTA 2009, <sup>F119</sup>...
- “health service body” has the same meaning as in section 985 of CTA 2010 [<sup>F120</sup>, and
- “relevant public body ” means a body that—
- (a) is not within subsection (2)(a) to (c) and is not a government department,
- (b) acts under any enactment for public purposes and not for its own profit, and
- (c) is not within the charge to corporation tax.]
- [<sup>F121</sup>(5) In this section “enactment ” includes—
- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
- (b) an enactment contained in, or in an instrument made under—
- (i) an Act of the Scottish Parliament,
- (ii) Northern Ireland legislation, or
- (iii) a Measure or Act of the National Assembly for Wales.]

#### Textual Amendments

**F117** Word in s. 327(2)(c) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(2\)](#), 36(1)

**F118** S. 327(2)(ca) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(2\)](#), 36(1)

**F119** Word in s. 327(4) omitted (retrospectively) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(3\)](#), 36(1)

**F120** Words in s. 327(4) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(3\)](#), 36(1)

**F121** S. 327(5) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 24\(4\)](#), 36(1)

## 328 Interpretation of sections 316 to 327

In sections 316 to 327 “finance arrangement” means—

- (a) in the case of an amount that is a debit or credit that meets the condition in section 313(2) or 314(2), the loan relationship to which the debit or credit relates,

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- (b) in the case of an amount that meets the condition in section 313(4) or 314(4), the finance lease to which the amount relates, and
- (c) in the case of an amount that meets the condition in section 313(5) or 314(5), the debt factoring or similar transaction to which the amount relates.

## CHAPTER 8

### “TESTED EXPENSE AMOUNT” AND “TESTED INCOME AMOUNT”

#### 329 The tested expense amount

- (1) References in this Part to the “tested expense amount” for a period of account of the worldwide group are to the sum of the net financing deductions of each relevant group company.
- (2) References in this Part to the “net financing deduction” of a company for a period of account of the worldwide group are to—
  - (a) the sum of the company's financing expense amounts for the period (see section 313), less
  - (b) the sum of the company's financing income amounts for the period (see section 314).
- (3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that [<sup>F122</sup>accrues] at a time at which the company is not a relevant group company.
- (4) If the amount determined in accordance with subsection (2) is negative, the net financing deduction of the company for the period is nil.
- (5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing deduction of the company for the period is nil.
- [<sup>F123</sup>(6) But subsection (5) does not apply if an election under section 331ZA has effect for the period of account.]

#### Textual Amendments

**F122** Word in s. 329(3) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 12\(2\)](#)

**F123** S. 329(6) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 12\(3\)](#)

#### 330 The tested income amount

- (1) References in this Part to the “tested income amount” for a period of account of the worldwide group are to the sum of the net financing incomes of each UK group company.
- (2) The reference in subsection (1) to the “net financing income” of a company for a period of account of the worldwide group is to—



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- (a) the sum of the company's financing income amounts for the period (see section 314), less
  - (b) the sum of the company's financing expense amounts for the period (see section 313).
- (3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that [<sup>F124</sup>accrues] at a time at which the company is not a UK group company.
- (4) If the amount determined in accordance with subsection (2) is negative, the net financing income of the company for the period is nil.
- (5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing income of the company for the period is nil.
- [<sup>F125</sup>(6) But subsection (5) does not apply if an election under section 331ZA has effect for the period of account.]

#### Textual Amendments

**F124** Word in s. 330(3) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 13\(2\)](#)

**F125** S. 330(6) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 13\(3\)](#)

### 331 Companies with net financing deduction or net financing income that is small

- (1) An amount determined in accordance with section 329(2) or 330(2) is “small” if it is less than £500,000.
- (2) The Treasury may by order amend subsection (1) by substituting a higher or lower amount for the amount for the time being specified there.
- (3) An order under subsection (2) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.
- (4) An order under subsection (2) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

#### [<sup>F126</sup>331ZElections disapplying sections 329(5) and 330(5)]

- (1) The relevant reporting body of the worldwide group may elect that sections 329(5) and 330(5) are not to apply in relation to the group.
- (2) The election must specify—
  - (a) the first period of account of the worldwide group in relation to which it has effect, and
  - (b) the name and tax reference of—
    - (i) each company that is a UK group company at the time the election is made, and

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- (ii) any other company that was a UK group company at any time during the period beginning at the same time as that period of account and ending when the election is made.
- (3) An election has effect for the specified period of account and subsequent periods of account of the worldwide group (unless withdrawn under subsection (4) or replaced by a further election made in relation to the group).
- (4) The relevant reporting body of the worldwide group may withdraw an election with effect from the beginning of the period of account specified in the withdrawal.
- (5) “The relevant reporting body” means—
- (a) if an appointment under section 288 has effect in relation to the specified period of account, the company appointed under that section, and
  - (b) if such an appointment does not have effect, the companies which are UK group companies at the relevant time, acting jointly.
- But the companies within paragraph (b) do not include any company that is a dormant company throughout the specified period of account.
- (6) An election or withdrawal must—
- (a) be made by notice in writing to an officer of Revenue and Customs, and
  - (b) be received by HMRC within 12 months of the end of the specified period of account.
- (7) The notice must be signed—
- (a) in a case within paragraph (a) of subsection (5), by the appropriate person in relation to the company appointed under section 288, and
  - (b) in a case within paragraph (b) of that subsection, by the appropriate person in relation to each company within that paragraph.
- (8) For the purposes of this section—
- “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 Part,
- and subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply as they apply for the purposes of that section;
- “relevant time” means—
- (a) in the case of an election, the time the election is made, and
  - (b) in the case of a withdrawal of an election, the time the withdrawal is made;
- “specified period of account” means—
- (a) in the case of an election, the period specified under subsection (2)(a), and
  - (b) in the case of a withdrawal of an election, the period specified under subsection (4).]

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#### Textual Amendments

**F126** S. 331ZA inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 14](#)

### [<sup>F127</sup>331A] **Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the tested expense amount or the tested income amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
    - (ii) if no amount is so disclosed, nil, and
  - (b) the “tax amount” in respect of a matter is—
    - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
    - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
    - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.]

#### Textual Amendments

**F127** S. 331A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 25, 36\(1\)](#)

*Status: Point in time view as at 31/12/2012.*

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## CHAPTER 9

### “AVAILABLE AMOUNT”

#### 332 The available amount

- (1) References in this Part to the “available amount” for a period of account of the worldwide group are to the sum of the amounts disclosed in the financial statements of the group for that period in respect of—
- interest payable on [<sup>F128</sup>borrowing],
  - amortisation of discounts relating to [<sup>F129</sup>borrowing],
  - amortisation of premiums relating to [<sup>F130</sup>borrowing],
  - amortisation of [<sup>F131</sup>expenses ancillary to borrowing],
  - the financing [<sup>F132</sup>expense] implicit in payments made under finance leases,
  - the financing [<sup>F133</sup>expense] relating to debt factoring, or
  - matters of such other description as may be specified in regulations made by the Commissioners.

[<sup>F134</sup>(1A) For the purposes of this section, expenses are “ancillary” to borrowing if and only if they are incurred directly—

- in bringing borrowing into existence or in altering its terms, or
- in making payments in respect of borrowing.

(1B) Where—

- a member of the group incurs expenses for the purpose of bringing borrowing into existence but the borrowing is not brought into existence, or
- a member of the group incurs expenses for the purpose of altering the terms of borrowing but the terms are not altered,

the expenses are treated as falling within subsection (1A)(a) to the same extent as if the borrowing had been brought into existence or the terms had been altered.]

- (2) An amount that falls within any of paragraphs (a) to (g) of subsection (1) is to be disregarded for the purposes of that subsection to the extent that—
- the amount represents a dividend payable in respect of preference shares, and
  - those shares are recognised as a liability in the financial statements of the group for the period.

#### Textual Amendments

- F128** Word in s. 332(1)(a) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F129** Word in s. 332(1)(b) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F130** Word in s. 332(1)(c) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(a\)](#), 36(1)
- F131** Words in s. 332(1)(d) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(b\)](#), 36(1)
- F132** Word in s. 332(1)(e) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(c\)](#), 36(1)
- F133** Word in s. 332(1)(f) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(2\)\(c\)](#), 36(1)

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

**F134** S. 332(1A)(1B) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 26\(3\), 36\(1\)](#)

### **[<sup>F135</sup>332A] Groups containing securitisation companies**

- (1) This section applies where a member of the worldwide group is a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010 at any time during a period of account of the worldwide group.
- (2) The reference in section 332(1) to amounts disclosed in the financial statements of the worldwide group for the period are to the amounts that would have been disclosed in those statements had they been prepared on the assumption that the company mentioned in subsection (1) was not a member of the worldwide group.

#### **Textual Amendments**

**F135** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

### **332B Partnerships: expenses of borrowing**

- (1) This section applies where—
  - (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and
  - (b) at any time during the period of account, a liability of the partnership in respect of borrowing (“the partnership liability”) is outstanding.
- (2) For the purposes mentioned in subsection (7), the financial statements of the worldwide group for the period of account are to be treated as if—
  - (a) they did not disclose any amounts falling within section 332(1)(a) to (d) relating to the partnership liability, and
  - (b) they disclosed instead such amounts as would have fallen within that provision had the financial statements been prepared on the following two assumptions.
- (3) The first assumption is that, at each time during the period of account at which the partnership liability was outstanding, each member of the partnership owed the appropriate proportion of the partnership liability to the same person, and on the same terms, as it was in fact owed by the partnership.
- (4) In subsection (3) “ the appropriate proportion ”, in relation to a member of the partnership at any time, is the proportion of the partnership's profits to which the member is entitled at that time under the partnership's profit sharing arrangements.
- (5) The second assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of any expenses relating to the partnership liability.
- (6) In subsection (5) “ the appropriate proportion ” in relation to a member of the partnership, is the proportion of the partnership's profits to which the member is entitled, over the period of account of the worldwide group, under the partnership's profit sharing arrangements.
- (7) The purposes referred to in subsection (2) are the purposes of—
  - (a) this Chapter, and

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- (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.

#### **Textual Amendments**

**F135** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

### **332C Partnerships: other expenses**

- (1) This section applies where—
- (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and
  - (b) during the period of account, the partnership incurs expenses in relation to finance leases or debt factoring (“the relevant partnership expenses”).
- (2) For the purposes mentioned in subsection (5), the financial statements of the worldwide group for the period of account are to be treated as if—
- (a) they did not disclose any of the relevant partnership expenses, and
  - (b) they disclosed instead such amounts as would have fallen within section 332(1)(e) or (f), had the financial statements been prepared on the following assumption.
- (3) The assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of the relevant partnership expenses.
- (4) In subsection (3) “ the appropriate proportion ”, in relation to a member of the partnership, is the proportion of the partnership's profits to which the member is entitled, over the period of account of the worldwide group, under the partnership's profit sharing arrangements.
- (5) The purposes referred to in subsection (2) are the purposes of—
- (a) this Chapter, and
  - (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.]

#### **Textual Amendments**

**F135** Ss. 332A-332C inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 27, 36\(1\)](#)

### **333 Group members with income from oil extraction subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a ring fence trade (see section 277 of CTA 2010).
- (3) Condition B is that the external finance amount falls to be brought into account for the purposes of corporation tax in calculating the profits of that trade for that accounting period.

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- (4) In this section “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

### **334 Group members with income from shipping subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.
- (2) Condition A is that a member of the worldwide group is, for a relevant accounting period, a tonnage tax company for the purposes of Schedule 22 to FA 2000.
- (3) Condition B is that the external finance amount—
- (a) is taken into account in computing relevant shipping profits of that company for that accounting period, or
  - (b) comprises deductible finance costs outside the ring fence, to the extent that they are adjusted under paragraph 61 or 62 of Schedule 22 to FA 2000.
- (4) In this section—
- “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group, and
- “relevant shipping profits” has the same meaning as in Schedule 22 to FA 2000 (see Part 6 of that Schedule).

### **335 Group members with income from property rental subject to particular tax treatment in UK**

- (1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group (“the external finance amount”) must be disregarded if conditions A and B are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate business under section 541 of CTA 2010 (ring-fencing of property rental business).
- (3) Condition B is that the external finance amount falls to be brought into account in calculating the profits arising from that business in that accounting period.
- (4) In this section “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

### **336 Meaning of accounting expressions used in this Chapter**

Subject to any provision to the contrary, expressions used in this Chapter have the meaning for the time being given by international accounting standards.

*Status: Point in time view as at 31/12/2012.*

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### **[<sup>F136</sup>336A] Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the available amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
    - (ii) if no amount is so disclosed, nil, and
  - (b) the “tax amount” in respect of a matter is—
    - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
    - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
    - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.]

#### **Textual Amendments**

**F136** S. 336A inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 28, 36\(1\)](#)

## **CHAPTER 10**

### OTHER INTERPRETATIVE [<sup>F137</sup>AND SUPPLEMENTARY PROVISIONS]

#### **Textual Amendments**

**F137** Words in Pt. 7 Ch. 10 heading substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 29, 36\(1\)](#)

### **337 The worldwide group**

- <sup>F138</sup>[(1)] In this Part “the worldwide group” means any group of entities that—
- (a) is large, and
  - (b) contains one or more relevant group companies.



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[<sup>F139</sup>(2) For the purposes of subsection (1), section 345(3) to (7) (meaning of “relevant group company”) has effect as if references to the worldwide group were to the group of entities mentioned in subsection (1).]

#### Textual Amendments

**F138** S. 337 renumbered as s. 337(1) (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 15\(2\)](#)

**F139** S. 337(2) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 15\(3\)](#)

### 338 Meaning of “group”

- (1) Subject to subsections (2) and (3), in this Part “group” has the meaning for the time being given by international accounting standards.
- (2) If a group would (apart from this subsection) contain more than one ultimate parent, each of those ultimate parents, together with its subsidiaries, is to be treated as a separate group.
- (3) An entity that is a parent of the ultimate parent of a group is to be treated as not being a member of the group.
- (4) Subsections (2) and (3) do not apply for the purposes of section 339.

### 339 Meaning of “ultimate parent”

- (1) For the purposes of this Part, “ultimate parent”, in relation to a group, means an entity that—
  - (a) is a member of the group,
  - [<sup>F140</sup>(b) is either—
    - (i) a corporate entity that is [<sup>F141</sup>neither] a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies [<sup>F142</sup>nor an entity formed under the law of a territory outside the United Kingdom which would be a partnership if formed under the law of any part of the United Kingdom ] , or
    - (ii) a relevant non-corporate entity,
  - (c) is not a collective investment scheme <sup>F143</sup> ..., and
  - (d) is not a subsidiary (whether direct or indirect) of an entity that meets each of the conditions in paragraphs (a) to (c).]
- (2) In this section “collective investment scheme” has the meaning given by section 235 of FISMA 2000.

#### Textual Amendments

**F140** S. 339(1)(b)-(d) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 30, 36\(1\)](#)

**F141** Word in s. 339(1)(b)(i) substituted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 16\(2\)\(a\)](#)

*Status: Point in time view as at 31/12/2012.*

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- F142** Words in s. 339(1)(b)(i) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 5 para. 16(2)(b)**
- F143** Words in s. 339(1)(c) omitted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 5 para. 16(3)**

### **340 Meaning of “corporate entity”**

- (1) In this Part “corporate entity” means (subject to subsection (4))—
  - (a) a body corporate incorporated under the laws of any part of the United Kingdom or any other country or territory, or
  - (b) any other entity that meets conditions A and B.
- (2) Condition A is that the person or persons who have an interest in the entity hold shares in the entity, or interests corresponding to shares.
- (3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
  - (a) is taken by the entity or members of the entity, and
  - (b) is taken after the period in which the profits arise.
- (4) The following are not corporate entities for the purposes of this Part—
  - (a) the Crown,
  - (b) a Minister of the Crown,
  - (c) a government department,
  - (d) a Northern Ireland department, or
  - (e) a foreign sovereign power.

### **341 Meaning of “relevant non-corporate entity”**

- (1) In this Part “relevant non-corporate entity” means an entity—
  - (a) that is not a corporate entity, and
  - (b) in relation to which conditions A and B are met.
- (2) Condition A is that shares or other interests in the entity are listed on a recognised stock exchange.
- (3) Condition B is that the shares or other interests in the entity are sufficiently widely held.
- (4) For this purpose shares or other interests in an entity are “sufficiently widely held” if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.
- (5) Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this section.
- (6) In the application of that provision for those purposes, references to a company are to be treated as references to an entity.

### **342 Treatment of entities stapled to corporate, or relevant non-corporate, entities**

- (1) If a corporate entity is stapled to another entity, the two entities are treated for the purposes of this Part as if—

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- (a) they were one entity, and
  - (b) that one entity were a corporate entity.
- (2) If a relevant non-corporate entity is stapled to another entity, the two entities are treated as if—
- (a) they were one entity, and
  - (b) that one entity were a relevant non-corporate entity.
- (3) For the purposes of this section, an entity (“entity A”) is “stapled” to another (“entity B”) if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, to dispose of or to acquire shares or other interests in entity B.

### **343 Treatment of business combinations**

- (1) This section applies if two corporate entities—
- (a) are not subsidiaries of the same entity, but
  - (b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.
- (2) The two entities are treated for the purposes of this Part as if—
- (a) they were one entity, and
  - (b) that one entity were a corporate entity.

### **344 Meaning of “large” in relation to a group**

- (1) For the purposes of this Part, a group is “large” at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
- (2) In its application as a result of subsection (1), the Annex has effect subject to the following qualifications.
- (3) If a member of the group is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b).
- (4) Article 3 has effect with the omission of paragraph (5) (declaration in good faith where control cannot be determined etc).
- (5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.
- (6) Article 4 has effect with the omission of—
- (a) the second sentence of paragraph (1) (data to be taken into account from date of closure of accounts),
  - (b) paragraph (2) (no change of status unless ceilings exceeded for two consecutive periods), and
  - (c) paragraph (3) (estimate in case of newly established enterprise).

*Status: Point in time view as at 31/12/2012.*

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### 345 Meaning of “UK group company” and “relevant group company”

(1) This section applies for the purposes of this Part.

[<sup>F144</sup>(2) A company is a “UK group company” if—

- (a) it is a member of the worldwide group, and
- (b) it meets conditions A and B.

(3) A company is a “relevant group company” if—

- (a) it is a member of the worldwide group, and
- (b) it meets conditions A, B and C.]

(4) Condition A is that the company—

- (a) is resident in the United Kingdom, or
- (b) 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.

[<sup>F145</sup>(4A) Condition B is that the company is not a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010.]

(5) Condition [<sup>F146</sup>C] is that the company is either—

- (a) the ultimate parent of the worldwide group, or
- (b) a relevant subsidiary of the ultimate parent of the worldwide group.

(6) A company is a “relevant subsidiary” of the ultimate parent of the worldwide group if the company is a member of the worldwide group and—

- (a) the company is a 75% subsidiary of the ultimate parent,
- (b) the ultimate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company, or
- (c) the ultimate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up.

(7) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (6)(b) and (c) as it applies for the purposes of section 151(4) of that Act.

#### Textual Amendments

**F144** S. 345(2)(3) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(2\), 36\(1\)](#)

**F145** S. 345(4A) inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(3\), 36\(1\)](#)

**F146** Word in s. 345(5) substituted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 31\(4\), 36\(1\)](#)

### 346 Financial statements of the worldwide group

(1) This section applies for the purposes of this Part.

(2) References to financial statements of the worldwide group are to consolidated financial statements of the ultimate parent and its subsidiaries; and references to a balance sheet of the worldwide group are to be read accordingly.

*Status: Point in time view as at 31/12/2012.*

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- (3) References to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

### **347 Non-compliant financial statements of the worldwide group**

- (1) This section applies if—
- (a) financial statements of the worldwide group are drawn up in respect of a period,
  - (b) those financial statements are not acceptable, and
  - (c) the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.
- (2) This Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the period.
- (3) For the purposes of this section, financial statements are “acceptable” if—
- (a) they are drawn up in accordance with international accounting standards,
  - (b) they meet such conditions relating to accounting standards, or accounting principles or practice, as may be specified in regulations made by the Commissioners, or
  - (c) conditions A, B and C are met.
- (4) Condition A is that—
- (a) the companies whose results are included in the financial statements, and
  - (b) the companies whose results would be included in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (5) Condition B is that—
- (a) the transactions whose results are reflected in the amounts mentioned in section 332(1)(a) to (g) in the financial statements, and
  - (b) the transactions whose results would be reflected in those amounts in IAS financial statements of the worldwide group for the same period, were such statements drawn up, are the same.
- (6) Condition C is that the amounts mentioned in section 332(1)(a) to (d) in the financial statements are calculated using the effective interest method.
- (7) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

### **348 Non-existent financial statements of the worldwide group**

- (1) This section applies if financial statements of the worldwide group are not drawn up in respect of a period (“the relevant period”).
- (2) If the relevant period is 12 months or less, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the relevant period.

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- (3) If the relevant period is more than 12 months, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of each period to which subsection (4) applies.
- (4) This subsection applies to a period if—
- (a) it is the first period of 12 months falling within the relevant period,
  - (b) it is a period of 12 months falling within the relevant period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or
  - (c) it is a period of less than 12 months that—
    - (i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and
    - (ii) ends at the end of the relevant period.
- (5) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

[<sup>F147</sup>(6) Subsection (7) applies if—

- (a) financial statements of the worldwide group are drawn up in respect of a period (“the whole period”), but
- (b) the worldwide group was in existence for only part of that period (“the relevant part”).

(7) For the purposes of this Part (other than subsection (7))—

- (a) those statements are to be ignored, and
- (b) subsections (2) to (5) apply to the relevant part as they apply to the relevant period,

(and, accordingly, neither the whole period nor the remainder of it is to be treated as a period of account of the worldwide group to which this Part applies).]

#### Textual Amendments

**F147** S. 348(6)(7) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 5 para. 17**

[<sup>F148</sup>**348A** **Financial statements: business combinations to which the worldwide group is a party**

(1) Subsection (2) applies where—

- (a) a business combination or demerger occurs to which the worldwide group is party (“the relevant event”),
- (b) as a result of the relevant event, there is a change in the identity of the ultimate parent of—
  - (i) the worldwide group, or
  - (ii) any other group which is party to the relevant event, and
- (c) financial statements of the worldwide group are drawn up, or (in the absence of this section) would be treated as drawn up under section 348, for a

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period which begins before and ends after the relevant event (“the straddling period”).

- (2) This Part (apart from this section) applies as if—
- (a) no financial statements of the worldwide group had been drawn up for the straddling period,
  - (b) section 348 did not apply to that period, and
  - (c) IAS financial statements had been drawn up in respect of each of the following—
    - (i) the period beginning at the same time as the straddling period and ending immediately before the relevant event, and
    - (ii) the period beginning with the relevant event and ending at the same time as the straddling period.
- (3) For the purposes of this section—
- (a) “demerger” means a transaction by which one or more groups cease to be members of a group,
  - (b) a group is party to a business combination or demerger if the business combination or demerger affects one or more members of the group, and
  - (c) the reference to “IAS financial statements” is to be construed in accordance with section 348(5).]

#### Textual Amendments

**F148** S. 348A inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 18](#)

### 349 References to amounts disclosed in financial statements

- (1) References in this Part to amounts disclosed in financial statements include an amount comprised in an amount so disclosed.
- (2) References in this Part to amounts disclosed in financial statements do not include, in the case of an amount that—
- (a) is an amount mentioned in section 332(1)(a) to (g), and
  - (b) has been capitalised and is accordingly included in the balance sheet comprised in the financial statements,
- any part of that amount that was included in a balance sheet comprised in financial statements for an earlier period.
- (3) References in this Part to amounts disclosed in financial statements do not include—
- (a) any amount disclosed in respect of a group pension scheme, or
  - (b) any amount disclosed in respect of any entity that is not a member of the group.

### 350 Translation of amounts disclosed in financial statements

- (1) References in this Part (except in Chapter 2) to an amount disclosed in financial statements for a period are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

- (2) The exchange rate by reference to which the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

### 351 Expressions taking their meaning from international accounting standards

- (1) For the purposes of this Part, the following expressions have the meaning for the time being given by international accounting standards—

[<sup>F149</sup>“business combination”,]  
 “effective interest method”,  
 “entity”,  
 “parent”, and  
 “subsidiary”.

[<sup>F150</sup>(1A) The definition of “subsidiary” in subsection (1) does not affect the meaning of the expression “75% subsidiary” (which is defined in section 1154 of CTA 2010).]

- (2) The Commissioners may by order amend this section.

#### Textual Amendments

**F149** Words in s. 351(1) inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 5 para. 19**

**F150** S. 351(1A) inserted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), **Sch. 5 paras. 32, 36(1)**

### 352 Meaning of “relevant accounting period”

For the purposes of this Part, a “relevant accounting period” of a company, in relation to a period of account of the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

### 353 Other expressions

In this Part—

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

[<sup>F151</sup>“dormant company” means—

(a) a company that is “dormant” within the meaning of section 1169 of the Companies Act 2006, or

(b) a company of an equivalent description which is incorporated outside the United Kingdom,

other than, in the case of paragraph (a), a company in respect of which adjustments fall to be made under section 147(3) or (5) (transfer pricing: tax calculations to be based on arm's length not actual provision),]

“FISMA 2000” means the Financial Services and Markets Act 2000,

“FSA Handbook” means the Handbook made by the Financial Services Authority under FISMA 2000, and

“HMRC” means Her Majesty's Revenue and Customs.



*Status: Point in time view as at 31/12/2012.*

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#### Textual Amendments

**F151** Words in s. 353 inserted (with effect in accordance with Sch. 5 para. 22(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 20](#)

### [<sup>F152</sup>353A] **Effect of Part on parties to capital market arrangements**

- (1) This section applies in relation to cases in which a company (“company A”)—
  - (a) is a party to a capital market arrangement at any time during a period of account of the worldwide group, and
  - (b) is subject to a liability to corporation tax for a relevant accounting period as a result of the operation of this Part.
- (2) The Commissioners may by regulations make provision under which company A and a company that is a relevant group company at any time in the same period of account (“company B”) may jointly elect that company B is to take sole responsibility for discharging the liability.
- (3) Where an election has effect, the liability is treated for all purposes as if it were a liability of company B and not of company A.
- (4) The regulations may include provision about—
  - (a) when an election may be made (which may, in particular, be before the accounting period for which the liability arises);
  - (b) circumstances in which HMRC may or must—
    - (i) accept or reject an election, or
    - (ii) terminate the effect of an election that has already been accepted;
  - (c) the effect of termination by virtue of paragraph (b)(ii);
  - (d) the transfer from company A to company B of liabilities to penalties.
- (5) The provision that may be made by virtue of subsection (4)(b)(i) or (ii) includes provision conferring a discretion on HMRC.
- (6) In this section “ capital market arrangement ” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act).

#### Textual Amendments

**F152** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))

### [<sup>F153</sup>353A] **Power to make regulations where accounting standards change**

- (1) The Treasury may by regulations amend this Part to take account of any relevant accounting change resulting from a change in accounting standards.
- (2) “Relevant accounting change” means a change in the way in which a company is permitted or required for accounting purposes to present, or disclose amounts in, consolidated financial statements of an ultimate parent of a group and its subsidiaries.

*Status: Point in time view as at 31/12/2012.*

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- (3) “Change in accounting standards” means the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body.
- (4) Regulations under this section may make provision subject to an election or other specified circumstances.
- (5) Regulations under this section may apply to a pre-commencement period if they make provision in relation to a relevant accounting change which may or must be adopted, for accounting purposes, for a period of account, or part of a period of account, which coincides with that pre-commencement period.
- (6) A statutory instrument containing regulations under this section to which subsection (7) applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (7) This subsection applies if the regulations contain any provision which has or may have the effect of increasing any person's liability to tax.
- (8) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (9) In this section—
- “accounting body” means the International Accounting Standards Board or the Accounting Standards Board, or a successor body to either of those Boards;
- “accounting standard” includes any statement of practice, guidance or other similar document;
- “pre-commencement period”, in relation to regulations, means an accounting period, or part of an accounting period, which begins before the regulations are made.]

#### Textual Amendments

**F153** S. 353AA inserted (with effect in accordance with Sch. 5 para. 22(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 5 para. 21](#)

### **353B Regulations and orders**

Regulations or orders under this Part may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, or
- (c) make transitional provision and savings.]

#### Textual Amendments

**F152** Ss. 353A, 353B inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 33, 36\(1\)](#) (with [Sch. 5 para. 36\(3\)](#))

*Status: Point in time view as at 31/12/2012.*

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## PART 8

### OFFSHORE FUNDS

#### *Tax treatment of participants in offshore funds*

#### **354 Power to make regulations about tax treatment of participants**

- (1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, corporation tax or capital gains tax.
- (2) Regulations under subsection (1) may, in particular, make special provision about the treatment of participants in an offshore fund comprising—
  - (a) a part of umbrella arrangements (see section 360), or
  - (b) arrangements relating to a class of interest in other arrangements (see section 361).
- (3) Regulations under subsection (1) may, in particular—
  - (a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, corporation tax or capital gains tax,
  - (b) make provision about the supply of information by offshore funds, or trustees or officers of offshore funds—
    - (i) to Her Majesty's Revenue and Customs, or
    - (ii) to participants,
  - (c) make provision about the preparation of accounts and the keeping of records by offshore funds or trustees or officers of offshore funds, and
  - (d) make other provision about the administration of offshore funds.
- (4) Regulations under subsection (1) may, in particular, make provision consequential on the repeal by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) of Chapter 5 of Part 17 of ICTA (offshore funds).
- (5) Regulations under subsection (1) may, in particular—
  - (a) provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter,
  - (b) make provision by reference to standards or other documents issued by any person,
  - (c) modify an enactment (whenever passed or made),
  - (d) make different provision for different cases or different purposes, and
  - (e) make incidental, consequential, supplementary and transitional provision and savings.
- (6) Regulations under subsection (1) may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (7) In this section—
  - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - “modify” includes amend, repeal or revoke.

*Status: Point in time view as at 31/12/2012.*

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### **355 Meaning of “offshore fund”**

- (1) In section 354 “offshore fund” means—
  - (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
  - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
  - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom.
- (2) Subsection (1)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (3) In this section—

“body corporate” does not include a limited liability partnership, and  
“co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.
- (4) See also section 151W(b) of TCGA 1992, section 564U(b) of ITA 2007 and section 519(4)(b) of CTA 2009 (which have the effect that investment bond arrangements are not an offshore fund for the purposes of section 354).

### **356 Meaning of “mutual fund”**

- (1) In section 355 “mutual fund” means arrangements with respect to property of any description (including money) that meet conditions A, B and C.
- (2) Subsection (1) is subject—
  - (a) to the exceptions made by or under sections 357 and 359, and
  - (b) to sections 360 and 361.
- (3) Condition A is that the purpose or effect of the arrangements is to enable the participants—
  - (a) to participate in the acquisition, holding, management or disposal of the property, or
  - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (4) Condition B is that the participants do not have day-to-day control of the management of the property.
- (5) For the purposes of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (6) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
  - (a) the net asset value of the property that is the subject of the arrangements, or
  - (b) an index of any description.
- (7) The Treasury may by regulations amend condition C.

*Status: Point in time view as at 31/12/2012.*

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- (8) Regulations under subsection (7) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

### **357 Exceptions to definition of “mutual fund”**

- (1) Arrangements are not a mutual fund for the purposes of section 355 if—
- (a) condition D is met, and
  - (b) condition E or F is met.
- (2) Condition D is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in section 356(6) only in the event of the winding up, dissolution or termination of the arrangements.
- (3) Condition E is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (4) Condition F is that—
- (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements,
  - (b) subsection (5), (6) or (7) applies, and
  - (c) the arrangements are not designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (5) This subsection applies if none of the assets that are the subject of the arrangements is a relevant income-producing asset (see section 358).
- (6) This subsection applies if, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (7) This subsection applies if—
- (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
  - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (8) For the purposes of this section the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

### **358 Meaning of “relevant income-producing asset”**

- (1) This section has effect for the purposes of section 357.
- (2) An asset is a relevant income-producing asset if it produces income on which, if it were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (but see subsections (3) and (4)).
- (3) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—

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- (a) the asset (taking account of the hedging), or
  - (b) any product of the hedging arrangements.
- (4) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets (as defined by this section).

### **359 Power to make regulations about exceptions to definition of “mutual fund”**

- (1) The Treasury may by regulations amend or repeal any provision of section 357 or 358.
- (2) The Treasury may by regulations provide that arrangements are not a mutual fund for the purposes of section 355—
  - (a) in specified circumstances, or
  - (b) if they are of a specified description.
- (3) Regulations under this section may include provision having effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (4) Regulations under subsection (1) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

### *Supplementary*

### **360 Treatment of umbrella arrangements**

- (1) This section has effect for the purposes of this Part.
- (2) In the case of umbrella arrangements (see section 363)—
  - (a) each part of the umbrella arrangements is to be treated as separate arrangements, and
  - (b) the umbrella arrangements are to be disregarded.
- (3) Subsection (2)(a) is subject to section 361.

### **361 Treatment of arrangements comprising more than one class of interest**

- (1) This section has effect for the purposes of this Part.
- (2) Where there is more than one class of interest in arrangements (the “main arrangements”)—
  - (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and
  - (b) the main arrangements are to be disregarded.
- (3) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

### **362 Meaning of “participant” and “participation”**

- (1) In this Part references to “participant”, in relation to arrangements (or a fund), are to a person taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise.
- (2) In this Part references (however expressed) to participation, in relation to arrangements (or a fund), are to be read in accordance with subsection (1).

### **363 Meaning of “umbrella arrangements” and “part of umbrella arrangements”**

- (1) In this Part “umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (2) In this Part references to a part of umbrella arrangements are to the arrangements relating to a separate pool.

### **[<sup>F154</sup>363A Residence of offshore funds which are undertakings for collective investment in transferable securities**

- (1) This section applies to an offshore fund (within the meaning of section 355) which—
  - (a) is, for the purposes of the UCITS Directive, an undertaking for collective investment in transferable securities, and
  - (b) is authorised pursuant to Article 5 of the UCITS Directive in a Member State other than the United Kingdom.
- (2) If—
  - (a) the offshore fund is a body corporate which, under the law of the Member State in which it is authorised pursuant to Article 5 of the UCITS Directive, is treated as resident in that State for the purposes of any tax imposed under that law on income, and
  - (b) (apart from this section) the body corporate would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax or capital gains tax,the body corporate is instead to be treated as if it were not resident in the United Kingdom.
- (3) If, by virtue of section 99 or 103A of TCGA 1992, that Act applies in relation to the offshore fund as if it were a company, that Act applies as if the company were neither resident nor ordinarily resident in the United Kingdom (if it would not otherwise do so).
- (4) In this section “the UCITS Directive” means Directive [2009/65/EC](#) of the European Parliament and of the Council.]

#### **Textual Amendments**

**F154** S. 363A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), s. 59

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## PART 9

### AMENDMENTS TO RELOCATE PROVISIONS OF TAX LEGISLATION

#### 364 Oil activities

Schedule 1, which inserts a new Chapter 16A (oil activities) in Part 2 (trading income) of ITTOIA 2005, has effect.

#### 365 Alternative finance arrangements

Schedule 2, which—

- (a) inserts a new Part 10A in ITA 2007 (see Part 1 of the Schedule),
- (b) inserts a new Chapter 4 in Part 4 of TCGA 1992 (see Part 2 of the Schedule), and
- (c) makes other amendments (see Part 3 of the Schedule),

has effect.

#### 366 Power to amend the alternative finance provisions

- (1) The Treasury may by order amend the alternative finance provisions.
- (2) The amendments which may be made by such an order include—
  - (a) the variation of provision already included in the alternative finance provisions, and
  - (b) the introduction into the alternative finance provisions of new provision relating to alternative finance arrangements.
- (3) In subsection (2)(b) “alternative finance arrangements” means arrangements which in the Treasury's opinion—
  - (a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, but
  - (b) achieve a similar effect without including provision for the payment of interest.
- (4) An order under subsection (1) may, in particular—
  - (a) make provision of a kind similar to provision already made by the alternative finance provisions,
  - (b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies,
  - (c) make provision generally or only in relation to specified cases or circumstances,
  - (d) make different provision for different cases or circumstances, and
  - (e) make incidental, supplemental, consequential and transitional provision and savings.
- (5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.
- (6) In this section “the alternative finance provisions” means—
  - (a) section 367A of ICTA,



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- (b) Chapter 4 of Part 4 of TCGA 1992,
- (c) sections 372A to 372D, Part 10A and section 1005(2A) of ITA 2007,
- (d) Chapter 6 of Part 6 of CTA 2009,
- (e) sections 110, 256 to 259 and 1019 of CTA 2010.

(7) An order under this section that—

- (a) includes such amendments as are mentioned in subsection (2)(b), or
- (b) amends an enactment not contained in the alternative finance provisions but contained in an Act,

may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

### **367 Leasing arrangements: finance leases and loans**

Schedule 3, which inserts—

- (a) a new Part 11A in ITA 2007 (leasing arrangements: finance leases and loans), and
- (b) a new section 37A in TCGA 1992 (consideration on disposal of certain leases),

has effect.

### **368 Sale and lease-back etc**

Schedule 4, which inserts a new Part 12A in ITA 2007 (sale and lease-back etc), has effect.

### **369 Factoring of income etc**

Schedule 5, which inserts new Chapters 5B and 5C (finance arrangements, and loan or credit transactions) in Part 13 of ITA 2007 (anti-avoidance), has effect.

### **370 UK representatives of non-UK residents**

Schedule 6, which inserts—

- (a) new Chapters 2B and 2C in Part 14 of ITA 2007 (income tax: UK representatives of non-UK residents), and
- (b) a new Part 7A in TCGA 1992 (capital gains tax: UK representatives of non-UK residents),

has effect.

### **371 Miscellaneous relocations**

Schedule 7 (amendments to relocate some miscellaneous tax enactments) has effect.

*Status: Point in time view as at 31/12/2012.*

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## **PART 9A**

### CONTROLLED FOREIGN COMPANIES

#### **Textual Amendments**

**F155** Pt. 9A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 1](#) (with [ss. 56-58](#))

## **CHAPTER 1**

### OVERVIEW

#### **371AA Overview of Part**

- (1) A charge (“the CFC charge”) is charged under this Part on UK resident companies which have certain interests in CFCs.
- (2) The CFC charge is charged by reference to the chargeable profits of CFCs.
- (3) A “CFC” is a non-UK resident company which is controlled by a UK resident person or persons (but see subsection (6)).
- (4) Chapter 2 sets out the basic details of the CFC charge, including—
  - (a) the CFC charge gateway (through which profits of a CFC must pass in order to be chargeable profits), and
  - (b) the steps to be taken for charging the CFC charge.
- (5) Chapter 2 is supplemented by Chapters 3 to 17; in particular—
  - (a) Chapter 3 sets out how to determine which (if any) of Chapters 4 to 8 apply in relation to the profits of a CFC,
  - (b) so far as applicable, Chapters 4 to 8 set out how to determine which profits (if any) of a CFC pass through the CFC charge gateway, with—
    - (i) Chapter 4 dealing with profits attributable to UK activities,
    - (ii) Chapter 5 dealing with non-trading finance profits,
    - (iii) Chapter 6 dealing with trading finance profits,
    - (iv) Chapter 7 dealing with profits derived from captive insurance business, and
    - (v) Chapter 8 dealing with cases involving solo consolidation,
  - (c) Chapter 9 sets out exemptions for profits from qualifying loan relationships,
  - (d) Chapters 10 to 14 set out full exemptions from the CFC charge,
  - (e) Chapter 15 sets out how to determine the persons whose interests in a CFC are relevant to the charging of the CFC charge,
  - (f) Chapter 16 sets out how to determine the creditable tax of CFCs (for which credit is given against chargeable profits), and
  - (g) Chapter 17 sets out how to apportion a CFC's chargeable profits and creditable tax among the persons who have relevant interests in the CFC.
- (6) Chapter 18 explains the concept of “control” and also sets out certain cases in which a non-UK resident company is to be taken to be a CFC even though it is not controlled by a UK resident person or persons.

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- (7) Chapter 19 explains the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” which are referred to in this Part.
- (8) Chapter 20 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.
- (9) Chapter 21 contains provision about the management of the CFC charge, including the collection of sums charged.
- (10) Chapter 22 contains supplementary provision, including definitions of terms used in this Part.
- (11) Nothing in this Part affects—
  - (a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or
  - (b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of CTA 2009.
- (12) This Part is part of the Corporation Tax Acts.

## CHAPTER 2

### THE CFC CHARGE

#### **371BA Introduction to the CFC charge**

- (1) The CFC charge is charged in relation to accounting periods of CFCs in accordance with section 371BC.
- (2) Section 371BC applies in relation to a CFC's accounting period if (and only if)—
  - (a) the CFC has chargeable profits for the accounting period, and
  - (b) none of the exemptions set out in Chapters 10 to 14 applies for the accounting period.
- (3) A CFC's chargeable profits for an accounting period are its assumed taxable total profits for the accounting period determined on the basis—
  - (a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as pass through the CFC charge gateway, and
  - (b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).
- (4) “The CFC charge gateway” is explained in section 371BB.
- (5) Subsection (3) is subject to section 371SB(7) and (8) (which relates to settlement income included in a CFC's chargeable profits).

#### **371BB The CFC charge gateway**

- (1) Take the following steps to determine the extent to which a CFC's assumed total profits for an accounting period pass through the CFC charge gateway.

*Status: Point in time view as at 31/12/2012.*

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*Step 1* In accordance with Chapter 3, determine which (if any) of Chapters 4 to 8 apply for the accounting period. If none of those Chapters applies, none of the CFC's assumed total profits pass through the CFC charge gateway and step 2 is not to be taken.

*Step 2* Determine the extent to which the CFC's assumed total profits fall within any of the Chapters which applies for the accounting period. The CFC's assumed total profits pass through the CFC charge gateway so far as they fall within any of those Chapters.

(2) Subsection (1) is subject to—

- (a) Chapter 9 (exemptions for profits from qualifying loan relationships), and
- (b) section 371JE (which provides for adjustments of profits which would otherwise pass through the CFC charge gateway linked to the exemption set out in Chapter 10).

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

**C15** S. 371BB applied (with modifications) by 2009 c. 4, ss. 18H-18HE (as substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 20 para. 6** (with Sch. 20 para. 55(2))

**371BC Charging the CFC charge**

(1) Take the following steps if, as provided for by section 371BA(2), this section applies in relation to a CFC's accounting period.

*Step 1* In accordance with Chapter 15, determine the persons (“the relevant persons”) who have relevant interests in the CFC at any time during the accounting period. If none of the relevant persons is a company which meets the UK residence condition (see subsection (2)), the CFC charge is not charged in relation to the accounting period and no further steps are to be taken.

*Step 2* In accordance with Chapter 16, determine the CFC's creditable tax for the accounting period.

*Step 3* In accordance with Chapter 17, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

*Step 4* Take each relevant person which is a company meeting the UK residence condition and, in accordance with section 371BD, determine if the company is a chargeable company. If there are no chargeable companies, the CFC charge is not charged in relation to the accounting period and step 5 is not to be taken.

*Step 5* The CFC charge is charged on each chargeable company as follows. A sum equal to—

- (a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less
- (b) Q% of the CFC's creditable tax,

is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period. This step is subject to sections 371BG and 371BH.

(2) A company meets the UK residence condition if it is UK resident at a time during the accounting period when it has a relevant interest in the CFC.

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(3) For the purpose of taking step 5 in subsection (1) in relation to a chargeable company (“CC”)—

“the appropriate rate”, subject to section 371BH, means—

- (a) the rate of corporation tax applicable to CC's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or
- (b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,

“P%” means the percentage of the CFC's chargeable profits apportioned to CC,

“Q%” means the percentage of the CFC's creditable tax apportioned to CC, and

“the relevant corporation tax accounting period” means CC's accounting period for corporation tax purposes during which the CFC's accounting period ends.

### **371BD Chargeable companies**

(1) A company (“C”) which meets the UK residence condition is a chargeable company for the purposes of step 4 in section 371BC(1) if the total of the following percentages is at least 25%—

- (a) the percentage of the CFC's chargeable profits apportioned to C at step 3 in section 371BC(1), and
- (b) the percentages (if any) of those profits which are apportioned at that step to relevant persons who, at any time during the accounting period, are connected or associated with C.

(2) Subsection (1) is subject to sections 371BE and 371BF.

### **371BE Companies which are managers of offshore funds etc**

(1) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—

- (a) the CFC is an offshore fund (as defined in section 355),
- (b) the genuine diversity of ownership condition set out in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is met in relation to the fund,
- (c) C meets the fund management condition, and
- (d) apart from this section, a sum of no more than £500,000 would be charged on C as a chargeable company at step 5 in section 371BC(1).

(2) In applying regulation 75 of the 2009 Regulations for the purposes of subsection (1) (b), the reference in paragraph (1) to the period of account is to be read as a reference to the accounting period.

(3) C meets the fund management condition if at all times during the accounting period when C has relevant interests in the offshore fund—

- (a) the assets of the offshore fund are managed by C or a person connected with C,
- (b) C or the person connected with C receives out of those assets fees for managing those assets, and
- (c) C holds its relevant interests only or mainly for the purpose of attracting participants (as defined in section 362) to the fund who are not connected with C.

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- (4) If the accounting period is less than 12 months, the amount specified in subsection (1) (d) is to be reduced proportionately.

### **371BF Companies which are participants in offshore funds**

- (1) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—
- (a) the CFC is an offshore fund (as defined in section 355),
  - (b) at the relevant time and at all subsequent relevant times, C reasonably believes that the requirement of section 371BD(1) will not be met in relation to it, and
  - (c) the meeting of that requirement in relation to C is in no way attributable to any step—
    - (i) which was taken by C or any person connected or associated with C, and
    - (ii) which, at the time it was taken, could reasonably have been expected to cause that requirement to be met.
- (2) “The relevant time” means—
- (a) the beginning of the accounting period, or
  - (b) if C has no relevant interests in the offshore fund at the beginning of the accounting period, the time when C first has a relevant interest during the accounting period.
- (3) “Subsequent relevant time” means any time during the accounting period at which there is an increase or some other change in the relevant interests in the offshore fund which C has.

### **371BG Companies holding shares as trading assets etc**

- (1) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company (“CC”) has in the CFC at all times during the CFC's accounting period.
- (2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.
- (3) That basis is—
- (a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and
  - (b) so much of Q% as is so attributable is to be left out of Q%.
- (4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).
- (5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into

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account in determining any income, of CC chargeable to corporation tax for that period.

- (7) Subsection (8) applies if—
- (a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),
  - (b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and
  - (c) conditions B and C would be met but for the offshore fund not meeting that test.
- (8) Conditions B and C are to be taken to be met.
- (9) This section is subject to section 371BH.

### **371BH Companies carrying on BLAGAB**

- (1) Subsection (2) applies in relation to a chargeable company (“CC”) if—
- (a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,
  - (b) the I-E rules apply to CC for the relevant corporation tax accounting period, and
  - (c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—
    - (i) condition D,
    - (ii) condition E or F (or both), and
    - (iii) condition G.
- (2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.
- (3) That basis is—
- (a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—
    - (i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or
    - (ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and
  - (b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—
    - (i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (10) to (12)), and
    - (ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).
- (4) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).

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- (5) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (6) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (7) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (8) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (9) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.
- (10) “The apportioned profit” means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.
- (11) Take the following steps to determine the “BLAGAB component” of the apportioned profit.
  - Step 1* Assume that the apportioned profit is income falling within section 74(1) (j) of FA 2012 paid to CC at the end of the CFC's accounting period.
  - Step 2* Calculate how much of that income would be referable, in accordance with Chapter 4 of Part 2 of FA 2012, to CC's basic life assurance and general annuity business. That amount is the “BLAGAB component” of the apportioned profit.
- (12) The “policyholders' share” of the BLAGAB component of the apportioned profit is equal to the policyholders' share of the I - E profit for the relevant corporation tax accounting period as determined in accordance with the rules contained in Chapter 5 of Part 2 of FA 2012.

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

**C16** [S. 371BH](#) modified (with effect in accordance with reg. 2(2) of the amending S.I.) by [The Insurance Companies and CFCs \(Avoidance of Double Charge\) Regulations 2012 \(S.I. 2012/3044\)](#), regs. 1(1), 5

### CHAPTER 3

THE CFC CHARGE GATEWAY: DETERMINING WHICH (IF ANY) OF CHAPTERS 4 TO 8 APPLIES

#### **371CA Does Chapter 4 apply?**

- (1) Chapter 4 (profits attributable to UK activities) applies for a CFC's accounting period unless condition A, B, C or D is met.



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- (2) Condition A is that, at no time during the accounting period, does the CFC hold assets or bear risks under an arrangement to which both subsections (3) and (4) apply.
- (3) This subsection applies to an arrangement if—
  - (a) the main purpose, or one of the main purposes, of the arrangement is to reduce or eliminate any liability of any person to tax or duty imposed under the law of the United Kingdom, and
  - (b) in consequence of the arrangement, at any time the CFC expects its business to be more profitable than it would otherwise be (other than negligibly so).
- (4) This subsection applies to an arrangement if—
  - (a) there is an expectation that, as a consequence of the arrangement, one or more persons will have liabilities to tax or duty imposed under the law of any territory reduced or eliminated, and
  - (b) it is reasonable to suppose that, but for that expectation, the arrangement would not have been made.
- (5) Condition B is that, at no time during the accounting period, does the CFC have any UK managed assets or bear any UK managed risks (see subsection (9)).
- (6) Condition C is that, at all times during the accounting period, the CFC has itself the capability to ensure that the CFC's business would be commercially effective were—
  - (a) the UK managed assets of the CFC, and
  - (b) the UK managed risks borne by the CFC,to stop being UK managed.
- (7) In subsection (6) the reference to the capability of the CFC includes (in particular) its capability to select persons not connected with it to provide it with goods or services and to manage the transactions it has with persons not connected with it.
- (8) In determining if the requirements of subsection (6) are met at any time (“the relevant time”) during the accounting period, assume—
  - (a) that the CFC would continue to carry on the same business as it is actually carrying on at the relevant time, and
  - (b) that no relevant UK activities (see subsection (10)) by which any asset or risk was UK managed would be replaced—
    - (i) by activities carried on by any person connected with the CFC at any time, or
    - (ii) in any other way which relies to any extent upon the CFC receiving (directly or indirectly) resources or other assistance from a person connected with it at any time.
- (9) An asset or risk is “UK managed” if—
  - (a) the acquisition, creation, development or exploitation of the asset, or
  - (b) the taking on, or bearing, of the risk,is managed or controlled to any significant extent by way of relevant UK activities.
- (10) “Relevant UK activities” means activities carried on in the United Kingdom—
  - (a) by the CFC, otherwise than through a UK permanent establishment, or
  - (b) by companies connected with the CFC under arrangements which would not, it is reasonable to suppose, be entered into by companies not connected with each other.

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- (11) Condition D is that the CFC's assumed total profits consist only of one or both of the following—
- (a) non-trading finance profits;
  - (b) property business profits.

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

**C17** Pt. 9A Ch. 3 applied (with modifications) by 2009 c. 4, s. 18HA (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

**371CB Does Chapter 5 apply?**

- (1) Subject to sections 371CC and 371CD, Chapter 5 (non-trading finance profits) applies for a CFC's accounting period if (and only if) the CFC has non-trading finance profits.
- (2) In this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding any profits falling within subsection (3) or (4) or Chapter 8 (solo consolidation).
- (3) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a trade—
  - (a) which is carried on by the CFC, and
  - (b) no trading profits of which pass through the CFC charge gateway for the accounting period.
- (4) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.
- (5) Neither subsection (3) nor subsection (4) applies in relation to funds—
  - (a) held only or mainly because of a prohibition or restriction on the CFC paying dividends or making other distributions imposed under—
    - (i) the law of the territory in which the CFC is incorporated or formed,
    - (ii) the articles of association or other document regulating the CFC, or
    - (iii) any arrangement entered into by or in relation to the CFC,
  - (b) held with a view to paying dividends or making other distributions at a time after the end of the relevant 12 month period,
  - (c) held with a view to acquiring shares in any company or making any capital contribution to a person,
  - (d) held with a view to acquiring, developing or otherwise investing in land at a time after the end of the relevant 12 month period,
  - (e) held only or mainly for contingencies, or
  - (f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.
- (6) Subsection (5)(a) does not cover a prohibition or restriction which ceases to have effect before the end of the relevant 12 month period.
- (7) “The relevant 12 month period” means the period of 12 months after the end of the accounting period.

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- (8) In the case of a chargeable company which makes a claim under Chapter 9, in this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding also the CFC's qualifying loan relationship profits (as defined in Chapter 9).

### **371CC Incidental non-trading finance profits: the 5% rule**

- (1) This section applies in relation to a CFC's accounting period if one or both of the following requirements is met—
- (a) the CFC has trading profits or property business profits (or both);
  - (b) the CFC has exempt distribution income and, at all times during the accounting period, a substantial part of its business is the holding of shares or securities in companies which are its 51% subsidiaries.
- (2) Chapter 5 does not apply for the accounting period if the CFC's non-trading finance profits are no more than 5% of the relevant amount.
- (3) “The relevant amount” is—
- (a) if the requirement of subsection (1)(a) is met, the total of the CFC's trading profits and property business profits determined before deduction of interest or any tax or duty imposed under the law of any territory,
  - (b) if the requirement of subsection (1)(b) is met, the total of the CFC's exempt distribution income, or
  - (c) if both those requirements are met, the sum of the totals given by paragraphs (a) and (b).
- (4) Subsection (5) applies for the purposes of subsection (2) if—
- (a) the requirement of subsection (1)(b) is met (whether or not the requirement of subsection (1)(a) is also met),
  - (b) at any time during the accounting period, a 51% subsidiary of the CFC (“the CFC subsidiary”) is also a CFC, and
  - (c) the CFC subsidiary has relevant non-trading finance profits as determined in accordance with subsection (6) or (7).
- (5) The CFC subsidiary's relevant non-trading finance profits are to be added to the CFC's non-trading finance profits.
- (6) If—
- (a) the CFC subsidiary has an accounting period (“the relevant period”) which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,
- the CFC subsidiary's “relevant non-trading finance profits” are its non-trading finance profits for the relevant period.
- (7) If—
- (a) the CFC subsidiary has an accounting period (“the relevant period”) which otherwise overlaps with the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,

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the CFC subsidiary's "relevant non-trading finance profits" are a just and reasonable proportion of its non-trading finance profits for the relevant period.

- (8) In this section references to the CFC's trading profits are to those profits excluding any of them which pass through the CFC charge gateway for the accounting period.
- (9) "Exempt distribution income" means any dividends or other distributions which are not brought into account in determining the CFC's assumed total profits on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).
- (10) This section needs to be read with section 371CD.

### **371CD Incidental non-trading finance profits: the further 5% rule**

- (1) This section applies in relation to a CFC's accounting period if—
  - (a) the requirements of section 371CC(1)(a) and (b) are both met, but
  - (b) the CFC's non-trading finance profits (as added to under section 371CC(5) if applicable) are more than 5% of the relevant amount for the purposes of section 371CC(2).
- (2) Chapter 5 does not apply for the accounting period if the CFC's adjusted non-trading finance profits are no more than 5% of the total of the CFC's exempt distribution income (as defined in section 371CC(9)).
- (3) The CFC's "adjusted non-trading finance profits" are its non-trading finance profits excluding any profits falling within section 371CB(3) or (4).
- (4) Subsection (5) applies if any CFC subsidiary's relevant non-trading finance profits are added under section 371CC(5) to the CFC's non-trading finance profits for the purposes of section 371CC(2).
- (5) The CFC subsidiary's relevant non-trading finance profits are also to be added to the CFC's adjusted non-trading finance profits for the purposes of subsection (2) above.

### **371CE Does Chapter 6 apply?**

- (1) Subject to what follows, Chapter 6 (trading finance profits) applies for a CFC's accounting period if (and only if)—
  - (a) the CFC has trading finance profits, and
  - (b) at any time during the accounting period, the CFC has funds or other assets which derive (directly or indirectly) from UK connected capital contributions.
- (2) The CFC's trading finance profits are to be treated for the purposes of this Part as if they were non-trading finance profits (and, accordingly, Chapter 6 cannot apply for the accounting period) if—
  - (a) the CFC is a group treasury company in the accounting period, and
  - (b) a notice is given to an officer of Revenue and Customs requesting that the CFC's trading finance profits be treated as if they were non-trading finance profits.
- (3) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).

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- (4) Section 316(5) to (11) (group treasury companies) applies for the purpose of determining if a CFC is a “group treasury company” as if references to the relevant period were to the accounting period.
- (5) For this purpose, section 337(1) (definition of “the worldwide group”) applies with the omission of paragraph (a).
- (6) A notice under subsection (2)(b)—
  - (a) may be given only by a company or companies determined under subsection (7) or (8), and
  - (b) must be given—
    - (i) within 20 months after the end of the accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (7) A company may give a notice if—
  - (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (8) Two or more companies may together give a notice if—
  - (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (9) In subsections (7) and (8) “X%” means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the accounting period.

### **371CF Does Chapter 7 apply?**

- (1) Chapter 7 (captive insurance business) applies for a CFC's accounting period if (and only if)—
  - (a) at any time during the accounting period, the main part of the CFC's business is insurance business, and
  - (b) the CFC's assumed total profits include amounts falling within subsection (2).
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—
  - (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or
    - (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.

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- (3) In subsection (2)(b)(ii)—
- “services” does not include services provided as part of insurance business, and
- “UK connected company” means—
- (a) a UK resident company connected with the CFC, or
  - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

### **371CG Does Chapter 8 apply?**

- (1) Chapter 8 (solo consolidation) applies for a CFC's accounting period if (and only if) condition A or B is met.
- (2) Condition A is that, at any time during the accounting period—
  - (a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the FSA Handbook, and
  - (b) the CFC's parent undertaking in relation to that waiver is a UK resident company.
- (3) Condition B is that, at any time during the accounting period—
  - (a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,
  - (b) the UK resident bank must meet requirements of the FSA Handbook in relation to its capital,
  - (c) any fall in the value of the shares held in the CFC would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets those requirements of the FSA Handbook, and
  - (d) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares in the CFC is to obtain a tax advantage for itself or any company connected with it.
- (4) In this section—
 

“the FSA Handbook” means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time), and

“UK resident bank” means a UK resident person carrying on banking business.
- (5) The Treasury may by regulations amend this Chapter or Chapter 8 as they consider appropriate to take account of—
  - (a) any changes to the FSA Handbook, or
  - (b) any relevant document published by the Financial Services Authority from time to time.
- (6) “Relevant document” means—
  - (a) a document which replaces the FSA Handbook, or
  - (b) a document which changes or replaces a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

*Status: Point in time view as at 31/12/2012.*

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## CHAPTER 4

### THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

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

- C18** Pt. 9A Ch. 4 applied (with modifications) by 2009 c. 4, s. 18HB (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

#### 371DA Introduction to Chapter

- (1) Take the steps set out in section 371DB(1) to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).
- (2) In this Chapter references to the CFC's assumed total profits are to those profits excluding its non-trading finance profits and property business profits (if any).
- (3) For the purposes of this Chapter—
  - (a) “the OECD Report” means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development (“OECD”) dated 22 July 2010,
  - (b) terms used which are also used in the OECD Report have the same meaning as they have in the OECD Report,
  - (c) “the CFC group” means the CFC taken together with the companies with which it is connected as those companies may change from time to time,
  - (d) “the provisional Chapter 4 profits” has the meaning given at step 7 in section 371DB(1),
  - (e) “the relevant assets and risks” has the meaning given at step 1 in section 371DB(1), subject to any exclusions at step 2 or 6,
  - (f) “SPF” means a significant people function or a key entrepreneurial risk-taking function,
  - (g) an SPF is a “UK SPF” so far as the SPF is carried out in the United Kingdom—
    - (i) by the CFC, otherwise than through a UK permanent establishment, or
    - (ii) by a company connected with the CFC, and
  - (h) an SPF is a “non-UK SPF” so far as it is not a UK SPF.
- (4) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.
- (5) “Relevant document” means—
  - (a) a document which replaces, updates or supplements the report mentioned in subsection (3)(a), or
  - (b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

#### 371DB The steps

- (1) Here are the steps referred to in section 371DA(1).

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The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

*Step 1* Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits have arisen. The identified assets and risks are called “the relevant assets and risks”

*Step 2* Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

*Step 3* Identify the SPFs carried out by the CFC group which are relevant to—

- (a) the economic ownership of the assets included in the relevant assets and risks, or
- (b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

*Step 4* Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

*Step 5* Assume that the UK SPFs determined at step 4 are carried out by a permanent establishment which the CFC has in the United Kingdom and, accordingly, determine the extent to which the assets and risks included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

*Step 6* Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

*Step 7* Re-determine the CFC's assumed total profits on the basis that the CFC—

- (a) does not hold, or has not held, the assets included in the relevant assets and risks, and
- (b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5. “The provisional Chapter 4 profits” are the CFC's assumed total profits so far as they are left out of the re-determined profits.

*Step 8* Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

- (2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—
  - (a) did not hold, or had not held, the asset to any extent at all, or
  - (b) did not bear, or had not borne, the risk to any extent at all.
- (3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.
- (4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.



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### **371DC Exclusion: UK activities a minority of total activities**

- (1) For the purposes of step 6 in section 371DB(1), this section applies to an asset or risk included in the relevant assets and risks if amount A is no more than 50% of amount B.
- (2) Amount A is the total of—
  - (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset, or
    - (ii) not borne the risk,so far as it would be attributed to the permanent establishment mentioned at step 5 in section 371DB(1), and
  - (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
    - (i) not held the asset, or
    - (ii) not borne the risk,so far as it would be so attributed.
- (3) Amount B is the total of—
  - (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all, and
  - (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all.
- (4) Subsection (5) applies if it is not reasonably practicable to separate a number of assets or risks included in the relevant assets and risks for the purpose of determining amounts A and B in relation to each of those assets or risks separately.
- (5) In subsections (1) to (3) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DD Exclusion: economic value**

- (1) Subsection (2) applies if—
  - (a) an asset or risk is included in the relevant assets and risks,
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1), and
  - (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if—
  - (a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had

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- the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and
- (b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).
- (3) “Net economic value” does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.
- (4) “The relevant non-tax value” is the excess value mentioned in subsection (2)(a) so far as it does not derive (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.
- (5) Subsection (6) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
- (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.
- (6) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DE Exclusion: independent companies' arrangements**

- (1) Subsection (2) applies if—
- (a) an asset or risk is included in the relevant assets and risks,
- (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1),
- (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits, and
- (d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements with companies not connected with the CFC which—
- (a) would be structured in the same way as the arrangements mentioned in subsection (1)(d), and
- (b) would, in relation to the CFC's business, have the same commercial effect as those arrangements.
- (3) Subsection (4) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
- (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic

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ownership of each of those assets, or the assumption and management of each of those risks, separately.

- (4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

### **371DF Exclusion: trading profits (the basic rule)**

- (1) All trading profits are to be excluded from the provisional Chapter 4 profits if the following conditions are met—
- (a) the business premises condition (see section 371DG),
  - (b) the income condition (see section 371DH),
  - (c) the management expenditure condition (see section 371DI),
  - (d) the IP condition (see section 371DJ), and
  - (e) the export of goods condition (see section 371DK).
- (2) Trading profits are also to be excluded from the provisional Chapter 4 profits in accordance with section 371DI(7) and (8) (so far as applicable).
- (3) This section is subject to section 371DL (anti-avoidance).

### **371DG Exclusion: trading profits (business premises condition)**

- (1) This section applies for the purposes of section 371DF(1)(a).
- (2) The business premises condition is met if, at all times during the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—
- (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
  - (b) from which the CFC's activities in that territory are wholly or mainly carried on.
- (3) “Premises” means—
- (a) an office, shop, factory or other building or part of a building,
  - (b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or
  - (c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

### **371DH Exclusion: trading profits (income condition)**

- (1) This section applies for the purposes of section 371DF(1)(b).
- (2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—
- (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies.
- (3) For the purposes of subsection (2) the CFC's “relevant trading income” is its trading income, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.

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- (4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, the CFC's main business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.
- (5) The income condition is met if the CFC's relevant UK trading income is no more than 10% of the CFC's trading income.
- (6) The CFC's "relevant UK trading income" is its trading income so far as it derives (directly or indirectly) from—
  - (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies,
 but excluding interest received from UK resident companies which are connected or associated with the CFC.
- (7) Neither subsection (2)(a) nor subsection (6)(a) covers income deriving (directly or indirectly) from a UK resident company if—
  - (a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

### **371DI Exclusion: trading profits (management expenditure condition)**

- (1) This section applies for the purposes of section 371DF(1)(c).
- (2) The management expenditure condition is met if the UK related management expenditure is no more than 20% of the total related management expenditure.
- (3) "The total related management expenditure" is the total of the following expenditure incurred during the accounting period by the CFC—
  - (a) expenditure incurred in the employment of any member of the CFC's staff who carries out relevant management functions,
  - (b) expenditure incurred in the engagement (directly or indirectly) of any individual who is not a member of the CFC's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the CFC, and
  - (c) expenditure incurred in the engagement (directly or indirectly) of any company related to the CFC so far as the expenditure represents expenditure incurred by the related company in—
    - (i) the employment of any member of the related company's staff who carries out relevant management functions, or
    - (ii) the engagement by the related company (directly or indirectly) of any individual who is not a member of the related company's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the related company.
- (4) "The UK related management expenditure" is the total related management expenditure so far as it relates to members of staff or other individuals who carry out relevant management functions in the United Kingdom.
- (5) A person carries out a "relevant management function" if the person manages or controls any assets or risks included in the relevant assets and risks.

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- (6) This covers (for example) a person who formulates plans or makes decisions in relation to—
  - (a) the acquisition, creation, development or exploitation of such assets, or
  - (b) the taking on, or bearing, of such risks.
- (7) Subsection (8) applies if—
  - (a) the conditions mentioned in section 371DF(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,
  - (b) there is an asset or risk which is included in the relevant assets and risks and to which any part of the total related management expenditure relates,
  - (c) the 50% condition is met in relation to that asset or risk, and
  - (d) trading profits arising from that asset or risk are included in the provisional Chapter 4 profits.
- (8) The trading profits are to be excluded from the provisional Chapter 4 profits.
- (9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure so far as relating to the asset or risk is no more than 50% of the total related management expenditure so far as relating to the asset or risk.
- (10) Subsection (11) applies if—
  - (a) any part of the total related management expenditure relates to a number of assets or risks included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the total related management expenditure relates to each of those assets or risks separately.
- (11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

### **371DJ Exclusion: trading profits (IP condition)**

- (1) This section applies for the purposes of section 371DF(1)(d).
- (2) The IP condition is met unless—
  - (a) the CFC's assumed total profits include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  - (b) all or parts of the exploited IP were—
    - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    - (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—

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- (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
- (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

### **371DK Exclusion: trading profits (export of goods condition)**

- (1) This section applies for the purposes of section 371DF(1)(e).
- (2) The export of goods condition is met if no more than 20% of the CFC's trading income arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

### **371DL Exclusion: trading profits (anti-avoidance)**

- (1) This section applies if—
  - (a) a condition mentioned in section 371DF(1) is met, or
  - (b) the 50% condition mentioned in section 371DI is met in relation to an asset or risk (or a number of assets or risks taken together),
 but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).
- (2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).
- (3) An arrangement falls within this subsection if—
  - (a) the arrangement involves the CFC group organising (or reorganising) a significant part of its business in a particular way, and
  - (b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—
    - (i) one or more of the conditions mentioned in section 371DF(1) are met, or
    - (ii) the 50% condition mentioned in section 371DI is met in relation to one or more assets or risks.

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## CHAPTER 5

### THE CFC CHARGE GATEWAY: NON-TRADING FINANCE PROFITS

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

- C19** Pt. 9A Ch. 5 applied (with modifications) by 2009 c. 4, s. 18HC (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

#### 371EA The basic rule

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are its non-trading finance profits so far as they fall within any of sections 371EB to 371EE.
- (2) In this Chapter references to the CFC's non-trading finance profits are to be read in accordance with section 371CB(2) and, so far as applicable, section 371CB(8).

#### 371EB UK activities

- (1) To determine the extent to which the CFC's non-trading finance profits fall within this section, take steps 1 to 5 and 7 in section 371DB(1) as if references in section 371DB to the CFC's assumed total profits were references to its non-trading finance profits.
- (2) Non-trading finance profits fall within this section so far as they would be included in the provisional Chapter 4 profits as determined on the basis mentioned in subsection (1).

#### 371EC Capital investment from the UK

- (1) Non-trading finance profits fall within this section so far as they arise from relevant UK funds or other assets.
- (2) Subsection (3) applies in relation to any profits which (apart from subsection (3)) would fall within this section if—
  - (a) an amount of expenditure incurred by the CFC in managing the relevant UK funds or other assets itself was brought into account in calculating the profits, and
  - (b) it is reasonable to suppose that the amount of expenditure is less than the fee which a company not connected with the CFC would charge the CFC for carrying out the same management activities.
- (3) There is to be deducted from the profits an amount representing what it is reasonable to suppose the difference between the amount of expenditure and the fee would be.
- (4) “Relevant UK funds or other assets” means—
  - (a) funds or other assets which represent, or derive (directly or indirectly) from, any capital contribution to the CFC made (directly or indirectly) by a UK connected company (whether in relation to an issue of shares in the CFC or otherwise),

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- (b) funds or other assets which represent, or derive (directly or indirectly) from, any amounts included in the CFC's chargeable profits for any earlier accounting period in relation to which the CFC charge is charged,
  - (c) funds or other assets which represent, or derive (directly or indirectly) from, any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or
  - (d) funds or other assets—
    - (i) which represent, or derive (directly or indirectly) from, any funds or other assets received by the CFC (directly or indirectly) from a UK connected company, and
    - (ii) which are not covered by paragraphs (a) to (c).
- (5) In subsection (4)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received—
- (a) in exchange for goods or services provided by the CFC, or
  - (b) by way of a loan.
- (6) “UK connected company” means—
- (a) a UK resident company connected with the CFC, or
  - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

### **371ED Arrangements in lieu of dividends etc to UK resident companies etc**

- (1) Non-trading finance profits fall within this section so far as they arise from an arrangement (other than a relevant finance lease) in relation to which the following condition is met.
- (2) The condition is that—
- (a) the arrangement is made by the CFC (directly or indirectly)—
    - (i) with a UK resident company connected with the CFC, or
    - (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
  - (b) it is reasonable to suppose—
    - (i) that the arrangement is made as an alternative to the CFC paying dividends or making any other distribution to the other company (directly or indirectly), and
    - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

### **371EE Leases to UK resident companies etc**

- (1) Non-trading finance profits fall within this section so far as they arise from a relevant finance lease in relation to which the following condition is met.
- (2) The condition is that—
- (a) the lease is made by the CFC (directly or indirectly)—



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- (i) with a UK resident company connected with the CFC, or
  - (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
- (b) it is reasonable to suppose—
- (i) that the lease is made as an alternative to the other company purchasing (directly or indirectly) the asset which is the subject of the lease, and
  - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

## CHAPTER 6

### THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

#### 371FA The basic rule

- (1) Take the following steps to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

This is subject to regulations under section 371FD or 371FE.

*Step 1* Determine if, during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose its free capital would be were it a company which is not the 51% subsidiary of any other company. If there is excess free capital, “the step 1 amount” is—

- (a) the excess free capital, or
- (b) if less, the CFC's free capital so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 2* This step applies only if the CFC carries on insurance business during the accounting period; if it does not, go straight to step 3. Determine if, during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose its free assets would be were it a company which is not the 51% subsidiary of any other company. If there is excess free assets, “the step 2 amount” is—

- (a) the excess free assets, or
- (b) if less, the CFC's free assets so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 3* If no excesses are determined at steps 1 and 2, no profits fall within this Chapter. Otherwise, the profits falling within this Chapter are the CFC's trading finance profits so far as it is reasonable to suppose that those profits arise from the investment or other use of the step 1 amount or the step 2 amount (or both

- (2) For the purposes of step 1 in subsection (1) the CFC's “free capital” is the funding it has for its business so far as the funding does not give rise to debits which are brought into account in determining the CFC's non-trading finance profits or trading finance profits.
- (3) For the purposes of step 2 in subsection (1) the CFC's “free assets” is the amount by which the value of its assets exceeds its loan capital.

*Status: Point in time view as at 31/12/2012.*

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- (4) Subsections (2) and (3) are subject to sections 371FB and 371FC and subsection (3) is also subject to subsection (6).
- (5) Subsection (6) applies if—
- (a) the CFC, acting outside its insurance business, gives a guarantee against losses of an insurance business of another company which is connected with the CFC,
  - (b) the guarantee is necessary for the purpose of meeting regulatory requirements applicable to the other company's insurance business,
  - (c) in consequence of having given the guarantee, the CFC is required by regulatory requirements applicable to its insurance business to hold more assets than it would otherwise be required to hold, and
  - (d) during the accounting period, the CFC holds assets solely for the purpose of meeting that requirement for more assets.
- (6) The value of the assets held by the CFC as mentioned in subsection (5)(d) is to be deducted from the CFC's free assets.
- (7) For the purposes of this section the “value” of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

### **371FB Qualifying loan relationships**

- (1) Subsection (2) applies if, during the CFC's accounting period, the CFC is the ultimate debtor in relation to a qualifying loan relationship (within the meaning of Chapter 9) of another CFC (“the creditor CFC”).
- (2) E% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) “E%” is given by the following formula—

$$100 \% \times \frac{EP}{P}$$

where—

EP is the total amount of the profits of the qualifying loan relationship which are exempt, and

P is the total amount of the profits of the qualifying loan relationship.

- (4) For the purposes of subsection (3)—
  - (a) references to the profits of the qualifying loan relationship are to the profits of the qualifying loan relationship for accounting periods of the creditor CFC which fall wholly or partly in the CFC's accounting period,
  - (b) the profits of the qualifying loan relationship for an accounting period of the creditor CFC are to be determined in accordance with Chapter 9,
  - (c) the steps in subsection (5) are to be taken to determine the amount of the profits of the qualifying loan relationship for an accounting period of the creditor CFC which are “exempt”, and

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- (d) the profits of the qualifying loan relationship for an accounting period of the creditor CFC which falls only partly in the CFC's accounting period, and the amount of those profits which are exempt, are to be apportioned between—
    - (i) the part of the creditor CFC's accounting period which falls in the CFC's accounting period, and
    - (ii) the part which does not,with only those profits, and the amount of exempt profits, apportioned to the part mentioned in sub-paragraph (i) being included in P or EP (as the case may be).
- (5) Here are the steps referred to in subsection (4)(c).

The steps are to be taken separately in relation to each chargeable company which makes a claim under Chapter 9 in relation to the creditor CFC's accounting period.

The amount of the profits of the qualifying loan relationship for the creditor CFC's accounting period which are exempt is the total of the amounts given by step 2.

*Step 1* Determine the amount of the profits of the qualifying loan relationship for the accounting period which, in the case of the chargeable company, are exempt under Chapter 9.

*Step 2* Multiply the amount determined at step 1 by P% (as defined in section 371BC(3), ignoring sections 371BG(3)(a) and 371BH(3)(b)).

### **371FC Loans from foreign permanent establishments of UK resident companies**

- (1) Subsection (2) applies if—
- (a) there is a company (“C”) which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  - (b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,
  - (c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and
  - (d) the relevant accounting period falls wholly or partly in the CFC's accounting period.
- (2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.

### **371FD Exclusion: banking business**

- (1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading

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finance profits so far as they arise from banking business, or banking business of a specified description, carried on by the CFC.

- (2) Regulations under subsection (1) may (in particular) make provision by reference to—
- (a) the territory in which a CFC is resident or any territory in which its banking business is regulated or carried on, or
  - (b) the regulatory requirements imposed from time to time in any territory in relation to banking business.

### **371FE Exclusion: insurance business**

- (1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from insurance business, or insurance business of a specified description, carried on by the CFC.
- (2) In subsection (1) “insurance business” does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371GA(2) (UK insurance contracts), including the investment of premiums received from such contracts.
- (3) Regulations under subsection (1) may (in particular) make provision by reference to—
  - (a) the territory in which a CFC is resident or any territory in which its insurance business is regulated or carried on, or
  - (b) the regulatory requirements imposed from time to time in any territory in relation to insurance business.

## **CHAPTER 7**

### THE CFC CHARGE GATEWAY: CAPTIVE INSURANCE BUSINESS

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

**C20** Pt. 9A Ch. 7 applied (with modifications) by 2009 c. 4, s. 18HD (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

### **371GA The basic rule**

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits so far as they—
  - (a) arise from the CFC's insurance business,
  - (b) fall within subsection (2), and
  - (c) fall within subsection (7) where applicable.
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—
  - (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or

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- (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.
- (3) In subsection (2)(b)(ii)—
  - “services” does not include services provided as part of insurance business, and
  - “UK connected company” means—
    - (a) a UK resident company connected with the CFC, or
    - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.
- (4) Subsection (2)(a)(i) does not cover a premium paid under a contract of insurance if—
  - (a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.
- (5) Subsection (2)(a) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (2)(a).
- (6) Subsection (7) applies in relation to an amount if—
  - (a) the CFC is resident in an EEA state for the accounting period, and
  - (b) the amount does not arise from the activities of a permanent establishment which the CFC has in a territory which is not an EEA state.
- (7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—
  - (a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or
  - (b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.
- (8) “UK non-tax reason” means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.
- (9) In this section “original contract of insurance”, in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (7)(b) the reference to the original insured is to be read accordingly.

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## CHAPTER 8

### THE CFC CHARGE GATEWAY: SOLO CONSOLIDATION

#### 371HA The basic rule

- (1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits which are not also included in the CFC's relevant profits amount.
- (2) The CFC's "relevant profits amount" is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—
  - (a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371CG(2)(b) or the UK resident bank mentioned in section 371CG(3), and
  - (b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

## CHAPTER 9

### EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS

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

**C21** Pt. 9A Ch. 9 applied (with modifications) by 2009 c. 4, s. 18HE (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

#### 371IA The basic rule

- (1) This Chapter applies if—
  - (a) apart from this Chapter, Chapter 5 (non-trading finance profits) would apply for a CFC's accounting period,
  - (b) the CFC's non-trading finance profits include qualifying loan relationship profits, and
  - (c) the business premises condition set out in section 371DG is met.
- (2) A chargeable company ("company C") in relation to the accounting period may make a claim to an officer of Revenue and Customs for step 2 in section 371BB(1) (the CFC charge gateway) to be taken, in the case of company C only, subject to this Chapter.
- (3) If company C makes a claim, in the case of company C only, the CFC's qualifying loan relationship profits pass through the CFC charge gateway so far as (and only so far as) they are not exempt under this Chapter.
- (4) The CFC's "qualifying loan relationship profits" are the profits of all its qualifying loan relationships taken together.
- (5) The extent to which those profits are "exempt" is to be determined—

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- (a) firstly, by applying either section 371IB or section 371ID to each of the CFC's qualifying loan relationships, and
  - (b) secondly, by applying section 371IE (if relevant).
- (6) Section 371IF sets out how to determine the profits of a qualifying loan relationship.
- (7) Sections 371IG to 371II define “qualifying loan relationship” etc.
- (8) Section 371IJ contains provision about claims under this Chapter.
- (9) In this Chapter references to the CFC's non-trading finance profits are to those profits excluding any profits—
- (a) falling within section 371CB(3) or (4) or Chapter 8 (solo consolidation), or
  - (b) arising from a relevant finance lease.
- (10) In this Chapter—
- (a) “loan relationship” has the meaning given by section 302(1) of CTA 2009 (and does not include anything which, although not falling within section 302(1), is treated for any purpose as if it were a loan relationship), and
  - (b) other terms used which are defined in Part 5 of CTA 2009 are to be read accordingly.
- (11) See section 371CB(8) which deals with the interaction between this Chapter and section 371CB and Chapter 5 in the case of a chargeable company which makes a claim under this Chapter.

### **371IB Loans funded out of qualifying resources**

- (1) This section applies to a qualifying loan relationship if company C's claim under this Chapter states that this section is to apply to the qualifying loan relationship.
- (2) X% of the profits of the qualifying loan relationship are exempt if company C's claim establishes—
  - (a) that, at all times during the relevant period, at least X% of the principal outstanding on the relevant loan (as that may vary from time to time during the relevant period) is funded by the CFC wholly out of qualifying resources, and
  - (b) that the ultimate debtor in relation to the qualifying loan relationship (see section 371IG(2) to (7)) is resident at all times during the relevant period in one territory only and that its territory of residence does not change at any time during the relevant period.
- (3) “X%” is the percentage specified in company C's claim for the purposes of this section in relation to the qualifying loan relationship (which may be 100%).
- (4) “The relevant period” means—
  - (a) the accounting period, or
  - (b) if for any part of the accounting period no principal is outstanding on the relevant loan, the part of the accounting period during which there is principal outstanding.
- (5) “The relevant loan” means the loan which is the subject of the qualifying loan relationship.
- (6) “Qualifying resources” means—

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- (a) profits of the CFC's business so far as it consists of the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or
  - (b) funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group.
- (7) Funds or other assets received by the CFC fall within subsection (6)(b) only so far as they derive (directly or indirectly) from—
- (a) profits of the business of the CFC group in the relevant territory,
  - (b) the qualifying value of relevant pre-acquisition funds or other assets (see section 371IC), or
  - (c) an issue of shares which meets the following requirements—
    - (i) the shares are shares in a member of the CFC group (“the parent member”) which is not the 75% subsidiary of any company,
    - (ii) the shares are ordinary shares which are not redeemable, and
    - (iii) the shares are issued to persons who are not members of the CFC group.
- (8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which a member of the CFC group incurs a debt in the United Kingdom to—
- (a) a non-UK resident person, or
  - (b) a UK resident person who is not a member of the CFC group.
- (9) It is to be assumed for the purposes of subsection (2) that, at all times during the relevant period, the amount of funds or other assets—
- (a) out of which the principal outstanding on the relevant loan is funded by the CFC, and
  - (b) which are not qualifying resources,
- is no less than the amount of the debt mentioned in subsection (8).
- (10) For the purposes of this section and section 371IC—
- (a) subject to subsections (11) and (12), “the CFC group”, as at any time, means the CFC taken together with the companies with which it is connected at that time,
  - (b) a member of the CFC group is “relevant” if it is resident in the relevant territory and no other territory,
  - (c) “the relevant territory” means the territory of residence of the ultimate debtor mentioned in subsection (2)(b),
  - (d) references to the business of the CFC group in the relevant territory do not include the making of loans to persons resident outside the relevant territory,
  - (e) references to the profits of the business of the CFC group in the relevant territory do not include—
    - (i) profits arising (directly or indirectly) from funds or other assets received by relevant members of the CFC group in relation to shares held by them in members of the CFC group which are not relevant members, or
    - (ii) so far as not covered by sub-paragraph (i), profits arising (directly or indirectly) from the business of the CFC group in any territory outside the relevant territory, and



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- (f) section 931U of CTA 2009 (definitions of “ordinary share” and “redeemable”) applies as it applies for the purposes of Part 9A of CTA 2009 (company distributions).
- (11) If the CFC is controlled by one UK resident company only (“the controller”), in relation to any time before the CFC came to be controlled by the controller, except in subsection (6), references to the CFC group include references to the controller taken together with any companies with which it is connected at that time.
- (12) If the CFC is controlled by two or more UK resident companies which are all connected with each other (“the controllers”), in relation to any time—
- (a) before which the CFC came to be controlled by the controllers, and
  - (b) at which the controllers (or those of the controllers which exist at that time) are all connected with each other,
- except in subsection (6), references to the CFC group include references to the controllers (or those of the controllers which exist) taken together with any other companies with which they are all connected at that time.

### **371IC What is the “qualifying value” of “relevant pre-acquisition funds or other assets”?**

- (1) This section applies for the purposes of section 371IB(7)(b).
- (2) It applies if—
- (a) a member of the CFC group acquires shares in a company (“the target company”) from persons who are not members of that group (“the unconnected persons”),
  - (b) in consideration for the acquisition of the shares, a member of the CFC group (“the parent member”) which is not the 51% subsidiary of any company issues shares to the unconnected persons, and
  - (c) the value of the consideration given for the acquisition of the shares by the parent member and any other members of the CFC group represents wholly or partly the value or a part of the value of any funds or other assets held by the target company.
- (3) Those funds or other assets are “relevant pre-acquisition funds or other assets” and, subject to what follows, their value or the part of their value represented by the value of the consideration is their “qualifying value”.
- (4) The qualifying value is to be reduced by Y% if one or both of the following paragraphs applies—
- (a) the issue of shares by the parent member to the unconnected persons represents only part of the consideration given for the acquisition of the shares in the target company;
  - (b) in connection with the acquisition of the shares in the target company, an extraordinary distribution is made to persons holding shares in the parent member.
- (5) “Y%” is given by the following formula—

$$100 \% \times \frac{B}{A + B}$$

where—

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A is the value of the consideration which is in the form of the issue of shares by the parent member to the unconnected persons, and

B is, as the case may be—

- (a) the value of the consideration which is not in the form of the issue of shares by the parent member to the unconnected persons,
- (b) the value of the extraordinary distribution, or
- (c) the total of the values given by paragraphs (a) and (b).

### **371ID The 75% exemption**

- (1) This section applies to a qualifying loan relationship if section 371IB does not apply to the qualifying loan relationship.
- (2) 75% of the profits of the qualifying loan relationship are exempt.

### **371IE Matched interest**

- (1) This section applies if—
  - (a) there are profits of qualifying loan relationships (“the leftover profits”) which are not exempt after either section 371IB or section 371ID has been applied to each qualifying loan relationship,
  - (b) the relevant corporation tax accounting period (as defined in section 371BC(3)) in relation to company C is a relevant accounting period of company C in relation to a period of account of the worldwide group,
  - (c) the CFC's accounting period ends in that period of account, and
  - (d) apart from this section—
    - (i) the charging of a sum on company C at step 5 in section 371BC(1) would cause section 314A (financing income amounts of chargeable companies) to apply in the case of company C, and
    - (ii) the relevant finance profits (see section 314A(1)(d)) would include the leftover profits.
- (2) All the leftover profits are exempt if, ignoring the relevant amounts, the tested income amount for the period of account is equal to or exceeds the tested expense amount for that period.
- (3) Otherwise, Z% of the leftover profits are exempt if the relevant amounts would cause the tested income amount for the period of account to exceed the tested expense amount for that period.
- (4) “Z%” is given by the following formula—

$$100 \% \times E I + R$$

where—

E is the amount of the excess which would be caused by the relevant amounts,

I is the amount of any increase in the tested income amount which would be caused by the relevant amounts, and

R is the amount of any reduction in the tested expense amount which would be caused by the relevant amounts.

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- (5) “The relevant amounts” are—
- (a) the financing income amount for the period of account which company C would have as a result of the application of section 314A as mentioned in subsection (1)(d) so far as it would include the leftover profits, and
  - (b) any other financing income amounts for the period of account corresponding to the amount given by paragraph (a) which members of the worldwide group who make claims under this Chapter in relation to any CFC would have.
- (6) For the purposes of subsection (5)(a) assume that company C's financing income amount would include P% of the leftover profits.
- (7) “P%” has the meaning given by section 371BC(3), subject to sections 371BG(3)(a) and 371BH(3)(b).
- (8) Subject to what follows, terms used in this section which are defined in Part 7 (tax treatment of financing costs and income) have the same meaning as they have in Part 7.
- (9) In subsections (2) to (4) references to the tested income amount or the tested expense amount are to that amount determined without regard to any debits, credits or other amounts arising from UK banking business or insurance business.
- (10) But subsection (9) does not apply for the purpose of determining any financing income amount under section 314A or affect the way in which any such amount is to be taken into account in determining the tested income amount or the tested expense amount.
- (11) “UK banking business or insurance business” means banking business or insurance business carried on by—
- (a) a UK resident company, or
  - (b) a non-UK resident company acting through a UK permanent establishment.
- (12) Part 7 has effect for the purposes of this section with the following modifications.
- (13) In section 261 (application of Part 7) the following are to be omitted—
- (a) in subsection (1), the words from “for which” to the end, and
  - (b) subsections (2) to (5).
- (14) Section 337(1)(a) (which limits “the worldwide group” to “large” groups) is to be omitted.

### **371IF Determining the profits of a qualifying loan relationship**

Take the following steps to determine the profits of a qualifying loan relationship for the purposes of this Chapter.

*Step 1* Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC's non-trading finance profits. The result is “the step 1 credits”.

*Step 2* Determine the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship) entered into by the CFC as a hedge of risk in connection with the qualifying loan relationship, and
- (b) are attributable to the hedge of risk.

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If the credits exceed the debits add the excess to the step 1 credits and if the debits exceed the credits subtract the deficit from the step 1 credits. The result is “the step 2 credits”.

*Step 3* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC's relevant debtor relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 2 credits). Add the credits to the step 2 credits. The result is “the step 3 credits”. A debtor relationship of the CFC is “relevant” if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship

*Step 4* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits. The result is “the step 4 credits”.

*Step 5* Allocate to the qualifying loan relationship a just and reasonable proportion of—

- (a) the debits from the CFC's loan relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 4 credits), and
- (b) any amounts set off under Chapter 16 of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC's non-trading finance profits.

Reduce the step 4 credits accordingly to give the profits of the qualifying loan relationship.

### **371IG What is a “qualifying loan relationship”?**

- (1) In this Chapter “qualifying loan relationship” means a creditor relationship of the CFC—
  - (a) the ultimate debtor in relation to which is a qualifying company, and
  - (b) which is not prevented from being a qualifying loan relationship by section 371IH.
- (2) In this Chapter “the ultimate debtor”, in relation to a creditor relationship of the CFC, means the debtor in relation to the creditor relationship.

This is subject to what follows.

- (3) Subsection (4) or (5) (as the case may be) applies if—
  - (a) there is a loan (“loan A”) which is the subject of a creditor relationship of the CFC,
  - (b) loan A, or a part of loan A, is made and used to fund (directly or indirectly) another loan (“loan B”) to a person (“P”), and

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- (c) loan B, or a part of loan B, is not made and used to fund (directly or indirectly) a further loan to any person.
- (4) If all of loan A is made and used to fund (directly or indirectly) loan B, the ultimate debtor in relation to the CFC's creditor relationship mentioned in subsection (3)(a) is P.
- (5) If only part of loan A is made and used to fund (directly or indirectly) loan B—
  - (a) that part of loan A is to be treated for the purposes of this Chapter as a separate loan giving rise to a separate creditor relationship of the CFC, and
  - (b) the ultimate debtor in relation to that separate creditor relationship is P.
- (6) If the requirement of subsection (3)(c) is met in relation to a part of loan B only, in subsections (4) and (5) references to loan B are to be read as references to that part of loan B only.
- (7) But neither subsection (4) nor subsection (5) applies if—
  - (a) the debtor (“D”) in relation to the CFC's creditor relationship is a qualifying company the main business of which is banking business or insurance business,
  - (b) the use of loan A, or the part of loan A, as mentioned in subsection (3)(b) occurs in the ordinary course of D's banking business or insurance business (as the case may be), and
  - (c) P is not a UK resident qualifying company.
- (8) In this section “qualifying company” means a company which—
  - (a) is connected with the CFC, and
  - (b) is controlled by the UK resident person or persons who control the CFC.

### **371IH Exclusions from definition of “qualifying loan relationship”**

- (1) If the ultimate debtor in relation to a creditor relationship of the CFC is a non-UK resident company, the creditor relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—
  - (a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-UK resident companies) in determining the company's profits which are attributable to a UK permanent establishment, or
  - (b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.
- (2) If the ultimate debtor in relation to a creditor relationship of the CFC is a UK resident company, the creditor relationship can be a qualifying loan relationship only so long as—
  - (a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and
  - (b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.
- (3) If the ultimate debtor in relation to a creditor relationship of the CFC is another CFC, the creditor relationship cannot be a qualifying loan relationship so long as—

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- (a) some or all of the other CFC's debits are relevant to the application of Chapters 3 to 8 or Chapter 12 in the case of the other CFC, and
  - (b) as a result of that, the CFC charge is not being charged in relation to the other CFC's accounting periods or any sums charged are less than what they would otherwise have been.
- (4) In subsections (1) to (3) references to the debits of the company which is the ultimate debtor in relation to a creditor relationship of the CFC are references to—
- (a) the ultimate debtor's debits in relation to the loan which is the subject of the CFC's creditor relationship, or
  - (b) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), the ultimate debtor's debits in relation to loan B.
- (5) A creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for—
- (a) a loan to another person, or
  - (b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (6) Subsection (5) does not apply if—
- (a) the main business of the ultimate debtor is banking business or insurance business, and
  - (b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor's banking business or insurance business (as the case may be).
- (7) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and
  - (b) the creditor relationship is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.
- (8) A creditor relationship of the CFC cannot be a qualifying loan relationship if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—
- (a) from a relevant UK connected company other than by way of a loan, or
  - (b) as a result of an arrangement which gives rise to a deduction in the calculation of the profits of a trade of a relevant UK connected company (apart from the ultimate debtor) for the purposes of Part 3 of CTA 2009 (trading income).
- (9) For the purposes of subsection (8) a company is “relevant UK connected” if—
- (a) the company is a UK resident company connected with the CFC,
  - (b) the company's main business is banking business or insurance business, and
  - (c) the company's banking business or insurance business (as the case may be) is a trade.
- (10) A creditor relationship of the CFC cannot be a qualifying loan relationship if—

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- (a) the CFC receives relevant UK funds or other assets for the purpose of funding the loan which is the subject of the CFC's creditor relationship,
  - (b) the provision of the relevant UK funds or other assets is itself funded (wholly or partly and directly or indirectly) by a loan made to a UK connected company by—
    - (i) a non-UK resident person, or
    - (ii) a UK resident person who is not connected with the CFC,
  - (c) the relevant loan is wholly or mainly used to repay wholly or partly another loan made to the ultimate debtor by a person not connected with the ultimate debtor, and
  - (d) the events mentioned in paragraphs (a) to (c) take place under, or are otherwise connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (11) In subsection (10)—
- (a) “relevant UK funds or other assets” and “UK connected company” have the same meaning as in section 371EC, and
  - (b) in paragraph (c) “the relevant loan” means—
    - (i) the loan which is the subject of the CFC's creditor relationship, or
    - (ii) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), loan B.
- (12) In subsections (4)(b) and (11)(b)(ii) references to loan B do not include any part of loan B—
- (a) which loan A is not made and used to fund, or
  - (b) in relation to which the requirement of section 371IG(3)(c) is not met.

### **371II Power to amend definitions**

The HMRC Commissioners may by regulations amend this Chapter—

- (a) so as to amend the definition of “qualifying resources” for the purposes of section 371IB, or
- (b) so as to amend the definition of “qualifying loan relationship” or “ultimate debtor” for the purposes of this Chapter.

### **371IJ Claims**

- (1) A claim under this Chapter must be made by being included in company C's company tax return for the relevant corporation tax accounting period (as defined in section 371BC(3)).
- (2) The claim may be included in the return originally made or by amendment.
- (3) The claim may be amended or withdrawn by company C only by amending the return.
- (4) A claim under this Chapter may be made, amended or withdrawn at any time up to whichever is the last of the following dates—
  - (a) the first anniversary of the filing date for company C's company tax return for the relevant corporation tax accounting period under paragraph 14 of Schedule 18 to FA 1998;

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- (b) if notice of enquiry is given into that return under paragraph 24 of that Schedule, 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 notice of the 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 claim under this Chapter may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allows it.
- (6) In any event, if after a claim under this Chapter is made there is a change of circumstances affecting the tested income amount or the tested expense amount mentioned in section 371IE(2), the claim may be amended at any time within the period of 12 months after the change of circumstances for the purpose of taking account of the change of circumstances.
- (7) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim under this Chapter within the time allowed by or under this section.
- (8) In subsection (4) references to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim under this Chapter.
- (9) An enquiry is so restricted if—
- (a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998, and
  - (b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim under this Chapter.

## CHAPTER 10

### THE EXEMPT PERIOD EXEMPTION

#### **371JA Introduction to Chapter**

- (1) This Chapter sets out an exemption called “the exempt period exemption” for the purposes of section 371BA(2)(b).
- (2) Section 371JE also provides for adjustments of profits which would otherwise pass through the CFC charge gateway (see section 371BB(2)(b)) linked to the exempt period exemption.

#### **371JB The basic rule**

- (1) The exempt period exemption applies for a CFC's accounting period if—
  - (a) the accounting period ends during an exempt period of the CFC (see sections 371JC and 371JD),
  - (b) the subsequent period condition is met, and
  - (c) the chargeable company condition is met.



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- (2) The subsequent period condition is met if—
  - (a) the CFC does not cease to be a CFC before having at least one accounting period which begins after the end of the exempt period, and
  - (b) section 371BC (charging the CFC charge) does not apply in relation to the CFC's first accounting period to begin after the end of the exempt period (see section 371BA(2)).
- (3) The chargeable company condition is met if, at all times during the relevant period—
  - (a) the charging condition in section 371JC is met, and
  - (b) each company which would be a chargeable company for the purposes of that condition is an original chargeable company or is connected with an original chargeable company.
- (4) In subsection (3)—

“original chargeable company” means a company which, for the purposes of the charging condition in section 371JC, would be a chargeable company at the beginning of the exempt period, and

“the relevant period” means the period which—

  - (a) begins immediately after the beginning of the exempt period, and
  - (b) ends at the end of the CFC's first accounting period to begin after the end of the exempt period.
- (5) This section is subject to section 371JF (anti-avoidance).

### **371JC When does an exempt period begin?**

- (1) An exempt period of a CFC begins at any time (“the relevant time”) during an accounting period of the CFC if—
  - (a) the initial condition is met,
  - (b) the charging condition is met at the relevant time, and
  - (c) at no time during the relevant preceding period (if there is one) is the charging condition met.
- (2) The initial condition is met if—
  - (a) immediately before the relevant time, the company (“C”) which is the CFC is carrying on a business, or
  - (b) if the relevant time is the time at which C is incorporated or formed, C is incorporated or formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies when C begins to control the company or companies.
- (3) To determine if the charging condition is met at any time, assume—
  - (a) that the company which is the CFC is a CFC at the time in question if that is not otherwise the case,
  - (b) that the time in question is itself an accounting period of the CFC, and
  - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.

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- (4) The charging condition is met at the time in question if, as a result of steps 1, 3 and 4 in section 371BC(1), there would be one or more chargeable companies in relation to the assumed accounting period.
- (5) “The relevant preceding period” means the period of 12 months ending immediately before the relevant time, excluding any part of that period during which the company which is the CFC does not exist.

### **371JD How long is an exempt period?**

- (1) Subject to what follows, an exempt period of a CFC lasts 12 months.
- (2) Subsection (3) applies if a notice is given to an officer of Revenue and Customs requesting that the length of an exempt period of a CFC be extended (or further extended).
- (3) An officer of Revenue and Customs may extend (or further extend) the length of the exempt period.
- (4) A notice under subsection (2) must be given no later than the end of the exempt period (as it stands at the time the notice is given).
- (5) A notice under subsection (2) may be given only by a company which, at the time the notice is given, would be a chargeable company for the purposes of the charging condition in section 371JC.

### **371JE Adjustment of profits passing through the CFC charge gateway**

- (1) This section applies for a CFC's accounting period if—
  - (a) the accounting period begins, but does not end, during an exempt period of the CFC, and
  - (b) the subsequent period condition and the chargeable company condition in section 371JB are both met.
- (2) The CFC's assumed total profits which would otherwise pass through the CFC charge gateway are to be adjusted to ensure that no profits which arise in the exempt period, as determined on a just and reasonable basis, pass through the CFC charge gateway.
- (3) This section is subject to section 371JF (anti-avoidance).

### **371JF Anti-avoidance**

- (1) The exempt period exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.
- (2) Condition A is that—
  - (a) an arrangement is entered into at any time,
  - (b) the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage for any person,
  - (c) the arrangement is linked to the exempt period exemption applying or being expected to apply (apart from this section)—
    - (i) for the relevant accounting period, or

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- (ii) for that period and one or more other accounting periods of the CFC, and
- (d) the arrangement involves one or both of the following—
  - (i) the CFC holding assets which give rise to non-trading finance profits or trading finance profits of the CFC, or
  - (ii) the CFC holding intellectual property which gives rise to any income of the CFC.
- (3) Condition B is that—
  - (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the length of any accounting period of the CFC is less than 12 months, and
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the exempt period exemption applies—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC.
- (4) In this section references to the exempt period exemption include references to section 371JE.

### **371JG Amendment of company tax returns**

- (1) This section applies in relation to a company's company tax return for a corporation tax accounting period if an exempt period of a CFC falls (wholly or partly) in the corporation tax accounting period.
- (2) Any amendment of the return which relates to the application (or non-application) of the exempt period exemption or section 371JE for an accounting period of the CFC may be made by the company at any time no later than 12 months after the relevant filing date.
- (3) “The relevant filing date” means the date which is the filing date under paragraph 14 of Schedule 18 to FA 1998 for the company's company tax return for its corporation tax accounting period in which ends the CFC's first accounting period to begin after the end of the exempt period.
- (4) “Corporation tax accounting period” means an accounting period for corporation tax purposes.

## **CHAPTER 11**

### **THE EXCLUDED TERRITORIES EXEMPTION**

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

- C22** Pt. 9A Chs. 11-14 applied (with modifications) by 2009 c. 4, s. 18I-18ID (as substituted (with effect in accordance with Sch. 20 para. 55(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 6](#))

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### **371KA Introduction to Chapter**

This Chapter sets out an exemption called “the excluded territories exemption” for the purposes of section 371BA(2)(b).

### **371KB The basic rule**

- (1) The excluded territories exemption applies for a CFC's accounting period if—
  - (a) the CFC is resident (see section 371KC) in an excluded territory for the accounting period,
  - (b) the total of the following amounts is no more than the threshold amount for the accounting period (see section 371KD)—
    - (i) the CFC's category A income (if any) for the accounting period (see sections 371KE and 371KF),
    - (ii) the CFC's category B income (if any) for the accounting period (see section 371KG),
    - (iii) the CFC's category C income (if any) for the accounting period (see section 371KH), and
    - (iv) the CFC's category D income (if any) for the accounting period (see section 371KI),
  - (c) the IP condition is met (see section 371KJ), and
  - (d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (2) In this Chapter “excluded territory” means a territory specified as such in regulations made by the HMRC Commissioners.
- (3) The HMRC Commissioners may also by regulations, in relation to CFCs resident in a specified excluded territory or to other specified cases, do one or more of the following—
  - (a) provide that one or both of the requirements set out in subsection (1)(b) and (c) does not have to be met in order for the excluded territories exemption to apply;
  - (b) modify one or both of those requirements, including by modifying any provision of this Chapter mentioned in subsection (1)(b) or (c);
  - (c) specify further requirements which must be met in order for the excluded territories exemption to apply.
- (4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

### **371KC How to determine the territory in which a CFC is resident**

- (1) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter “the CFC's territory” means that territory as so determined.
- (2) The CFC is taken to be resident in the territory determined in accordance with section 371TA.

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- (3) But section 371TA(1)(b) is to be applied only if, at all times during the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.
- (4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

### **371KD What is “the threshold amount”?**

- (1) The threshold amount for a CFC's accounting period is—
  - (a) 10% of the CFC's accounting profits for the accounting period, or
  - (b) if more, £50,000.
- (2) If the accounting period is less than 12 months, the amount specified in subsection (1)(b) is to be reduced proportionately.
- (3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read ignoring section 371VD(7) and (8).

### **371KE Category A income: the basic rule**

- (1) A CFC's category A income for an accounting period consists of any gross amounts (that is, amounts before deduction of expenses or transfers to or from reserves) of any relevant income to which subsection (3), (4) or (5) applies. This is subject to section 371KF.
- (2) “Relevant income” means any income of the CFC which—
  - (a) is brought into account in determining the CFC's accounting profits for the accounting period, or
  - (b) is not so brought into account but arises in the accounting period.
- (3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.
- (4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.
- (5) This subsection applies to any relevant income if—
  - (a) any tax falls to be paid in respect of the relevant income in the CFC's territory,
  - (b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and
  - (c) that repayment or payment—
    - (i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but
    - (ii) is not a form of relief in respect of losses incurred by the CFC.

### **371KF Category A income: permanent establishments in excluded territories**

- (1) This section applies if—

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- (a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the activities of a permanent establishment (“PE”) which the CFC has in a territory outside the CFC's territory, and
  - (b) the territory in which PE is established is an excluded territory.
- (2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in section 371KE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

### **371KG Category B income**

- (1) A CFC's category B income for an accounting period consists of any notional interest which—
- (a) is deducted from any of the CFC's relevant income for tax purposes under the law of the CFC's territory or any territory in which the CFC has a permanent establishment, but
  - (b) is not deducted in determining the CFC's assumed taxable total profits for the accounting period.
- (2) But the CFC's category B income is not to exceed its relevant non-local income.
- (3) “Notional interest” means an amount representing a notional interest expense or other financing charge calculated by reference to any of the CFC's equity or debt.
- (4) “Relevant income” has the same meaning as in section 371KE.
- (5) “Relevant non-local income” means the gross amount (that is, the amount before deduction of expenses or transfers to or from reserves) of any non-trading income—
- (a) which is included in the CFC's relevant income, and
  - (b) which is received (directly or indirectly) from—
    - (i) a person resident outside the CFC's territory, or
    - (ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

### **371KH Category C income**

A CFC's category C income for an accounting period is the total of the following amounts—

- (a) amounts included in the CFC's accounting profits for the period which fall within section 371VD(4)(a) (whether or not those amounts would have been included in those profits apart from section 371VD(4)(a)), and
- (b) amounts included in those profits by virtue only of section 371VD(4)(b).

### **371KI Category D income**

- (1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of any income which—

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- (a) is brought into account in determining the CFC's accounting profits for the accounting period, and
  - (b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).
- (2) Subsection (3) applies if—
- (a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,
  - (b) in the CFC's territory, the income is reduced by an amount (“the relevant amount”) for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and
  - (c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.
- (3) The relevant amount is to be included in the CFC's category D income.
- (4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

### **371KJ The IP condition**

- (1) This section applies for the purposes of section 371KB(1)(c).
- (2) The IP condition is met unless—
- (a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  - (b) all or parts of the exploited IP were—
    - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    - (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—
- (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—

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- (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

## CHAPTER 12

### THE LOW PROFITS EXEMPTION

#### **371LA Introduction to Chapter**

This Chapter sets out an exemption called “the low profits exemption” for the purposes of section 371BA(2)(b).

#### **371LB The basic rule**

- (1) The low profits exemption applies for a CFC's accounting period if subsection (2), (3), (4) or (5) applies.
- (2) This subsection applies if the CFC's accounting profits for the accounting period are no more than £50,000.
- (3) This subsection applies if the CFC's assumed taxable total profits for the accounting period are no more than £50,000.
- (4) This subsection applies if—
  - (a) the CFC's accounting profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (5) This subsection applies if—
  - (a) the CFC's assumed taxable total profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (6) If the accounting period is less than 12 months, the amounts specified in subsections (2), (3), (4)(a) and (b) and (5)(a) and (b) are to be reduced proportionately.

#### **371LC Anti-avoidance**

- (1) The low profits exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.
- (2) Condition A is that—
  - (a) an arrangement is entered into at any time,



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- (b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply for the relevant accounting period, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.
- (3) Condition B is that, at any time during the relevant accounting period, the CFC's business is, wholly or mainly, the provision of UK intermediary services.
- (4) For the purposes of subsection (3) the CFC provides “UK intermediary services” if—
  - (a) a UK resident individual (“the service provider”) personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person (“the client”), and
  - (b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the CFC.
- (5) The low profits exemption does not apply for a CFC's accounting period by virtue of section 371LB(2) or (4) if condition C is met.
- (6) Condition C is that, in determining the CFC's assumed taxable total profits for the accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

## CHAPTER 13

### THE LOW PROFIT MARGIN EXEMPTION

#### **371MA Introduction to Chapter**

This Chapter sets out an exemption called “the low profit margin exemption” for the purposes of section 371BA(2)(b).

#### **371MB The basic rule**

- (1) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.
- (2) In this section references to the CFC's accounting profits are to those profits as determined before any deduction for interest.
- (3) The CFC's “relevant operating expenditure” is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—
  - (a) the cost of goods purchased by the CFC, other than goods used by the CFC in the territory in which it is resident for the accounting period, and
  - (b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

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### **371MC Anti-avoidance**

The low profit margin exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if—

- (a) an arrangement is entered into at any time,
- (b) in consequence of the arrangement, the low profit margin exemption would (apart from this section) apply for the relevant accounting period, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profit margin exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.

## **CHAPTER 14**

### THE TAX EXEMPTION

#### **371NA Introduction to Chapter**

This Chapter sets out an exemption called “the tax exemption” for the purposes of section 371BA(2)(b).

#### **371NB The basic rule**

- (1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

*Step 1* Applying section 371TB, determine the territory (“the CFC's territory”) in which the CFC is resident for the accounting period. If no territory of residence can be determined by applying section 371TB, the tax exemption cannot apply and no further steps are to be taken.

*Step 2* Determine the amount of tax (“the local tax amount”) which is paid in the CFC's territory in respect of the CFC's local chargeable profits arising in the accounting period (applying section 371NC so far as relevant). If the local tax amount is determined under designer rate tax provisions (see section 371ND), the tax exemption cannot apply and step 3 is not to be taken.

*Step 3* In accordance with section 371NE, determine the amount of the corresponding UK tax for the accounting period. The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

- (2) Subsection (3) applies if an amount of tax is paid in the CFC's territory by a person (whether or not the CFC) in respect of any of the CFC's local chargeable profits arising in the accounting period taken together with other amounts.
- (3) For the purposes of step 2 in subsection (1) the amount of tax is to be apportioned between the CFC's local chargeable profits in question and the other amounts on a just and reasonable basis.
- (4) In this Chapter references to the CFC's local chargeable profits are to its profits as determined for tax purposes under the law of the CFC's territory, ignoring any capital gains or losses.

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### **371NC Reductions to “the local tax amount”**

- (1) This section applies for the purposes of step 2 in section 371NB(1).
- (2) The local tax amount is to be reduced to what it would have been—
  - (a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and
  - (b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.
- (3) This subsection applies to any income, or any income and expenditure, of the CFC—
  - (a) which is brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.
- (4) This subsection applies to any expenditure of the CFC—
  - (a) which is not brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.
- (5) Subsection (6) applies if—
  - (a) in the CFC's territory any tax falls to be paid in respect of the CFC's local chargeable profits arising in the accounting period,
  - (b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
  - (c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).
- (6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

### **371ND What are “designer rate tax provisions”?**

- (1) For the purposes of step 2 in section 371NB(1) “designer rate tax provisions” means provisions—
  - (a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and
  - (b) which are specified in regulations made by the HMRC Commissioners.
- (2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

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### **371NE How to determine “the corresponding UK tax”**

- (1) For the purposes of step 3 in section 371NB(1) “the corresponding UK tax” is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.
- (2) In determining that amount of corporation tax—
  - (a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and
  - (b) deduct from what would otherwise be that amount of corporation tax—
    - (i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and
    - (ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.
- (3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

## **CHAPTER 15**

### RELEVANT INTERESTS IN A CFC

#### *Introduction*

### **371OA Application of Chapter**

This Chapter applies for the purpose of determining the persons who have “relevant interests” in a CFC for the purposes of step 1 in section 371BC(1).

### **371OB Provision about interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) A person's interest in a company is an “indirect” interest so far as the person has the interest by virtue of having an interest in another company; and references to a “direct” interest in a company are to be read accordingly.
- (3) An interest held by an open-ended investment company within the meaning of Chapter 2 of Part 13 of CTA 2010 (see sections 613 and 615) is treated as held by the company's shareholders in proportion to their shareholdings.
- (4) An interest held by the trustees of an authorised unit trust is treated as held by the persons who have rights under the trust in proportion to their rights.
- (5) An interest held by a bare trustee or nominee (including by virtue of subsection (3) or (4)) is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.

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- (6) “Bare trustee” means a person acting as trustee for—
  - (a) a person absolutely entitled as against the trustee,
  - (b) two or more persons who are so entitled,
  - (c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or
  - (d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.
- (7) Subsection (8) applies in a case not covered by subsection (5) if—
  - (a) an interest is held in a fiduciary or representative capacity (including by virtue of subsection (3) or (4)), and
  - (b) there are one or more identifiable beneficiaries.
- (8) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

*What is a “relevant interest” in a CFC?*

### **371OC “Relevant interests” of UK resident companies**

- (1) A UK resident company's interest in a CFC is a “relevant interest”, except so far as subsection (2) applies to it.
- (2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

### **371OD “Relevant interests” of persons related to UK resident companies**

- (1) This section applies if, by virtue of section 371OC, a UK resident company (“UKRC”) has a relevant interest in a CFC.
- (2) A related person's interest in the CFC is a “relevant interest”, except so far as subsection (4) or (5) applies to it.
- (3) “Related person” means a person, other than a UK resident company, who is connected or associated with UKRC.
- (4) This subsection applies to the related person's interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.
- (5) This subsection applies to the interest so far as it is the same as UKRC's relevant interest in the CFC by virtue of UKRC having an interest in the related person.

### **371OE Other “relevant interests”**

- (1) This section applies if a person (“P”) has a direct interest in a CFC which is not a relevant interest by virtue of section 371OC or 371OD.
- (2) P's direct interest is a “relevant interest”, except so far as subsection (3) applies to it.
- (3) This subsection applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC by virtue of the other person having an interest in P.

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- (4) In subsection (3) the reference to another person's relevant interest is to another person's relevant interest by virtue of section 371OC or 371OD.

## CHAPTER 16

### CREDITABLE TAX OF A CFC

#### 371PA What is “creditable tax”?

- (1) For the purposes of step 2 in section 371BC(1) a CFC's creditable tax for an accounting period is the total of—
- (a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC's chargeable profits for the accounting period,
  - (b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax),
  - (c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period, and
  - (d) any amount of a foreign CFC charge paid in respect of any income included or represented in the CFC's chargeable profits for the accounting period.
- (2) In subsection (1)(a) “foreign tax” means—
- (a) the local tax amount, or
  - (b) any tax under the law of a relevant foreign territory.
- (3) In subsection (1)(b) “relevant income tax” means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.
- (4) In subsection (1)(d) “foreign CFC charge” means a charge under the law of a relevant foreign territory (by whatever name known) which is similar to the CFC charge.
- (5) In subsection (1)(b) to (d) references to an amount being set off, an amount actually charged or an amount paid do not include so much of any such amount as has been or falls to be repaid to the CFC or any other person whether on the making of a claim or otherwise.
- (6) “Relevant foreign territory” means a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

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## CHAPTER 17

### APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

#### *Introduction*

#### **371QA Application of Chapter**

This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 3 in section 371BC(1).

#### **371QB Provision about interpretation**

- (1) This section applies for the purposes of this Chapter.
- (2) Section 371OB applies as it applies for the purposes of Chapter 15.
- (3) “Ordinary shares”, in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.
- (4) For the purposes of subsection (3)—
  - (a) “share” includes a fraction of a share, and
  - (b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.
- (5) A person (“P”) holds ordinary shares in the CFC “indirectly” if P directly holds ordinary shares in a company which is share-linked to the CFC.
- (6) A company is “share-linked” to the CFC if it has an interest in the CFC only by virtue of it holding directly—
  - (a) ordinary shares in the CFC, or
  - (b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),and “share-linked company” means a company which is share-linked to the CFC.

*How are the apportionments to be made?*

#### **371QC The basic rules**

- (1) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371QD.
- (2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant person is to be determined on a just and reasonable basis.
- (3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.
- (4) Condition Y is that each relevant person meets the requirement that the person is either—
  - (a) UK resident at all times during the accounting period, or

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- (b) non-UK resident at all times during the accounting period.
- (5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.
- (6) A company (“C”) has an “intermediate interest” in the CFC if—
  - (a) C has an interest in the CFC, and
  - (b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

### **371QD Apportionments to be made in proportion to shareholding**

- (1) If conditions X to Z in section 371QC are met, apply subsections (2) and (3) to each relevant person.
- (2) Determine the percentage (“P%”) of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.
- (3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.
- (4) This section is supplemented by sections 371QE and 371QF.

### **371QE Indirect shareholdings**

- (1) This section applies to the relevant interest of a relevant person (“R”) so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC (“the relevant shares”).
- (2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of the issued ordinary shares in the CFC which the relevant shares represent.

- (3) “The appropriate fraction”, in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.
- (4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—
  - (a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and
  - (b) then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).



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### **371QF Variable shareholdings**

- (1) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.
- (2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.
- (3) “Holding period” means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.
- (4) “Relevant percentage”, in relation to a holding period, means the percentage given by the following formula—

$$P \times H A$$

where—

P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

### **371QG Anti-avoidance**

- (1) This section applies in relation to an accounting period (“the relevant accounting period”) of a CFC if—
  - (a) at any time an arrangement is entered into, and
  - (b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2)(da) of CTA 2010 in relation to—
    - (i) the relevant accounting period, or
    - (ii) that period and one or more other accounting periods of the CFC.
- (2) The CFC's chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).

## **CHAPTER 18**

### **CONTROL ETC**

#### **371RA Overview of Chapter**

- (1) Sections 371RB and 371RE set out how to determine for the purposes of this Part if a company is “controlled” by another person or persons.

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- (2) Section 371RC sets out certain cases in which a non-UK resident company which would not otherwise be a CFC is to be taken to be a CFC for the purposes of this Part.

### **371RB Legal and economic control**

- (1) A person (“P”) “controls” a company (“C”) if—
- (a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,
- P has the power to secure that the affairs of C are conducted in accordance with P's wishes.
- (2) A person (“P”) “controls” a company (“C”) if it is reasonable to suppose that P would—
- (a) if the whole of C's share capital were disposed of, receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,
  - (b) if the whole of C's income were distributed, receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or
  - (c) in the event of the winding-up of C or in any other circumstances, receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.
- (3) For the purposes of subsection (2) any rights which P has as a relevant bank are to be ignored.
- (4) In subsection (2)—
- (a) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,
  - (b) in determining for the purposes of paragraph (b) the percentage of the distributed amount which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and
  - (c) in determining for the purposes of paragraph (c) the percentage of C's assets which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.
- (5) “Relevant bank” means a person (“RB”) who—
- (a) carries on banking business which is regulated in the territory in which RB is resident, and
  - (b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.
- (6) In subsections (2) and (4) references to P receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for P's benefit.

*Status: Point in time view as at 31/12/2012.*

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- (7) If two or more persons, taken together, meet the requirement of subsection (1) or (2) for controlling a company, those persons are taken to control the company.

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

**C23** S. 371RB applied by 2009 c. 4, s. 931E(4)(6) (as substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 31](#) (with [Sch. 20 para. 53](#)))

**371RC Legal and economic control: the 40% rule**

- (1) This section applies to a non-UK resident company (“C”) if—
- in accordance with section 371RB(7), two persons (“the controllers”) control C, and
  - one of the controllers is UK resident and the other is non-UK resident.
- (2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).
- (3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.
- (4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—
- at least 40%, but
  - no more than 55%,
- of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

**371RD Legal and economic control: supplementary provision**

- (1) Subsection (2) applies for the purpose of—
- determining, in accordance with section 371RB, if a person, or two or more persons, control a company, or
  - determining if condition X or Y in section 371RC is met in relation to two persons who control a company.
- (2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).
- (3) The rights and powers referred to in subsection (2) are—
- rights and powers which the person (“P”) is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,
  - rights and powers of other persons so far as they fall within subsection (4),
  - if P is UK resident, rights and powers of any UK resident person who is connected with P, and
  - if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person (“Q”) who is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).

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- (4) Rights and powers fall within this subsection so far as they—
- (a) are required, or may be required, to be exercised in one or more of the following ways—
    - (i) on behalf of P,
    - (ii) under the direction of P, or
    - (iii) for the benefit of P, and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (5) In subsections (3)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371VF(2)(b)) is to be ignored.
- (7) In this section and sections 371RB and 371RC references to—
- (a) rights and powers of a person, or
  - (b) rights and powers which a person is or will become entitled to acquire,
- include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

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

**C24** S. 371RD applied by 2009 c. 4, s. 931E(5)(6) (as substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 20 para. 31](#) (with [Sch. 20 para. 53](#)))

**371RE Control determined by reference to accounting standards**

- (1) A person (“P”) “controls” a company (“C”) at any time when P is C's parent undertaking.
- (2) But C is not to be taken to be a CFC by virtue of subsection (1) at the time in question unless the 50% condition is met at that time.
- (3) To determine if the 50% condition is met at the time in question, assume—
  - (a) that C is a CFC at that time,
  - (b) that that time is itself an accounting period of the CFC, and
  - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.
- (4) The 50% condition is met at the time in question if, as a result of steps 1 and 3 in section 371BC(1), at least 50% of the CFC's chargeable profits would be apportioned to P taken together with its UK resident subsidiary undertakings (if any).

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- (5) “Parent undertaking” and “subsidiary undertaking” are to be read in accordance with Financial Reporting Standard 2 issued in July 1992 by the Accounting Standards Board, as from time to time modified, amended or revised.
- (6) For the purposes of this section it does not matter if P does not prepare, or is not required to prepare, consolidated financial statements in accordance with Financial Reporting Standard 2 (but see section 371RF(3)).

### **371RF Power to amend section 371RE etc**

- (1) The Treasury may by regulations amend section 371RE as they consider appropriate to take account of—
  - (a) any modification, amendment or revision of Financial Reporting Standard 2, or
  - (b) any relevant document.
- (2) “Relevant document” means—
  - (a) a document which replaces Financial Reporting Standard 2, or
  - (b) a document which replaces, modifies, amends or revises a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.
- (3) The Treasury may by regulations make provision corresponding to section 371RE—
  - (a) which operates by reference to any other accounting standard dealing with consolidated financial statements, and
  - (b) which is to apply, instead of section 371RE, to determine if a person “controls” a company where that person prepares, or is required to prepare, consolidated financial statements in accordance with that standard.
- (4) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—
  - (a) section 371RE, or
  - (b) provision corresponding to section 371RE contained in regulations under subsection (3).
- (5) In subsections (3) and (4) references to section 371RE are to that section as amended from time to time by regulations under subsection (1).

## **CHAPTER 19**

### ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS

#### *Overview*

### **371SA Overview of Chapter**

This Chapter explains the concepts of “assumed taxable total profits” and “assumed total profits” (see section 371SB) and “the corporation tax assumptions” (see section 371SC) which are referred to in this Part.

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*“Assumed taxable total profits” and “assumed total profits”*

**371SB What are “assumed taxable total profits” and “assumed total profits”?**

- (1) For the purposes of this Part a CFC's “assumed taxable total profits” for an accounting period are what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.
- (2) “Taxable total profits” has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).
- (3) But, for this purpose, in section 4(3) of CTA 2010—
  - (a) step 1 is to be applied subject to subsections (4) to (6) below, and
  - (b) step 2 is to be ignored.
- (4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.
- (5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
- (6) If by virtue of subsection (4) any income (“the settlement income”) is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.
- (7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—
  - (a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
  - (b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.
- (8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.
- (9) For the purposes of this Part a CFC's “assumed total profits” for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

*“The corporation tax assumptions”*

**371SC What are “the corporation tax assumptions”?**

- (1) In this Part “the corporation tax assumptions” means the assumptions set out in sections 371SD to 371SR.
- (2) The corporation tax assumptions are to be applied in determining the following for an accounting period (“the relevant accounting period”) of a CFC—
  - (a) the CFC's assumed taxable total profits in accordance with section 371SB(1),
  - (b) the corresponding UK tax in accordance with section 371NE, and
  - (c) the CFC's creditable tax in accordance with Chapter 16.

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### **371SD UK residence etc**

(1) Assume—

- (a) that the CFC is UK resident at all times during the relevant accounting period,
- (b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and
- (c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371VB) are accounting periods for corporation tax purposes, accordingly.

(2) Subsection (1)—

- (a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and
- (b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).

(3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.

(4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.

(5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.

(6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

### **371SE Close company**

Assume that the CFC is not a close company.

### **371SF Claims and elections**

(1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—

- (a) to have made that claim or election which would give the maximum amount of relief, and
- (b) to have made that claim or election within any applicable time limit.

(2) Subsection (1) does not cover (so far as it would otherwise do so) a claim or election under—

- (a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),

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- (b) section 1275 of CTA 2009 (relief for unremittable income),
  - (c) section 9A of CTA 2010 (designated currency of a UK resident investment company), or
  - (d) regulations made under paragraph 16 of Schedule 8 to FA 2006 (election for lease to be treated as long funding lease).
- (3) Subsection (1) is also subject to section 371SK(5).

### **371SG Disapplication of assumption in section 371SF(1)**

- (1) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—
- (a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371SF(1),
  - (b) to have made for the relevant accounting period a specified claim or election, being different from one assumed by section 371SF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or
  - (c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).
- (2) In determining for the purposes of section 371BA(3) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (3) In determining the CFC's creditable tax—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (4) The claims which may be specified in a notice under subsection (1) by virtue of paragraph (b) include claims under the provision mentioned in section 371SF(2)(b) or 371SK(5).
- (5) A notice under subsection (1)—
- (a) may be given only by a company or companies determined under subsection (6) or (7), and
  - (b) must be given—
    - (i) within 20 months after the end of the relevant accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (6) A company may give a notice if—



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- (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (7) Two or more companies may together give a notice if—
- (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (8) In subsections (6) and (7) “X%” means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

### **371SH Elections under section 9A of CTA 2010**

- (1) This section applies if—
- (a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and
  - (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).
- (2) Assume—
- (a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
  - (b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.
- (3) Subsection (2)(b) does not apply if—
- (a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and
  - (b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—

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- (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
- (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (7) In subsections (5) and (6) (and this subsection)—
- “the applicable accounting period” means the accounting period of the CFC during which the notice under subsection (1) or (3) (as the case may be) is given, and
- “X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

### **371SI Modification of sections 6 and 7 of CTA 2010**

- (1) This section applies if—
- (a) in accordance with section 371SH, the CFC is assumed to have made an election under section 9A of CTA 2010, but
  - (b) applying the corporation tax assumptions apart from this section, section 6 or 7 of CTA 2010 could not apply in relation to the CFC for a period of account because the CFC does not prepare its accounts in accordance with generally accepted accounting practice.
- (2) If sterling is the CFC's designated currency for the period of account, assume that section 6 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—
- (a) omitted from subsection (1A)(a), and
  - (b) in subsection (2), inserted after “its accounts in sterling”.
- (3) If the CFC's designated currency for the period of account is a currency other than sterling, assume that section 7 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—
- (a) omitted from subsection (1A)(a), and
  - (b) at step 1 in subsection (2), inserted after “that currency”.

### **371SJ Elections for leases to be treated as long funding leases**

- (1) This section applies if—

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- (a) a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made a long funding lease election in the form specified in the notice, and
  - (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make a long funding lease election in the form specified in the notice.
- (2) Assume—
  - (a) that a long funding lease election has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
  - (b) that, accordingly, regulation 2(5) of the 2007 Regulations applies to determine the effect (if any) of that election.
- (3) Subsection (2)(b) does not apply if—
  - (a) a notice is given to an officer of Revenue and Customs withdrawing the notice under subsection (1), and
  - (b) the time at which the notice withdrawing the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to withdraw its assumed long funding lease election.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—
  - (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
  - (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (7) In this section—
  - (a) “the 2007 Regulations” means the Long Funding Leases (Elections) Regulations 2007 (S.I. 2007/304),
  - (b) terms defined in the 2007 Regulations have the same meaning as they have in the 2007 Regulations,
  - (c) “the applicable accounting period” means the CFC's accounting period in which falls the effective date specified in the notice under subsection (1), and
  - (d) “X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

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- (8) The Treasury may by regulations amend this section as they consider appropriate to take account of any regulations made by them from time to time under paragraph 16 of Schedule 8 to FA 2006 (elections for leases to be treated as long funding leases).

### **371SK Intangible fixed assets**

- (1) This section applies for the purpose of applying Part 8 of CTA 2009 (intangible fixed assets).
- (2) Assume that any intangible fixed asset acquired or created by the CFC before its first accounting period was acquired or created by the CFC at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
- (3) In subsection (2) references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.
- (4) The assumption in subsection (2) does not affect the determination of the question whether Part 8 of CTA 2009 applies to an asset in accordance with section 882 of that Act (application of Part 8 to assets created or acquired on or after 1 April 2002).
- (5) Assume also that the CFC—
  - (a) has not claimed any relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of reinvestment), or
  - (b) made any provisional declaration of entitlement to such relief.
- (6) Subsection (5) is subject to section 371SG(4).

### **371SL Group relief etc**

- (1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.
- (2) Subsection (3) applies if—
  - (a) under Part 5 of CTA 2010 (group relief) the CFC actually surrenders any relief which is allowed to another company by way of group relief, but
  - (b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.
- (3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

### **371SM Capital allowances**

- (1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.
- (2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—
  - (a) was provided for purposes wholly other than those of the trade, and
  - (b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,

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and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.

- (3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.
- (4) This section is to be read as if it were contained in Part 2 of CAA 2001.

### **371SN Unremittable overseas income**

- (1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.
- (2) “The relevant territories” means—
  - (a) the United Kingdom,
  - (b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 20, and
  - (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

### **371SO Tax advantages**

- (1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.
- (2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

### **371SP Disguised interest: application of Chapter 2A of Part 6 of CTA 2009**

- (1) This section applies if—
  - (a) applying the corporation tax assumptions apart from this section, Chapter 2A of Part 6 of CTA 2009 (disguised interest) would, but for section 486D(1) of that Act, apply in relation to a return produced for the CFC by an arrangement to which the CFC is a party, and
  - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the CFC being a party to the arrangement is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Chapter 2A of Part 6 of CTA 2009 is to be assumed to apply in relation to the return.
- (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 486D(4) of CTA 2009.
- (4) This section is without prejudice to the generality of section 371SO.

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### **371SQ Shares accounted for as liabilities: application of section 521C of CTA 2009**

- (1) This section applies if—
  - (a) applying the corporation tax assumptions apart from this section, section 521C of CTA 2009 (shares accounted for as liabilities) would, but for section 521C(1)(f) of that Act, apply to a share held by the CFC, and
  - (b) the main purpose, or one of the main purposes, for which the CFC holds the share is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Section 521C of CTA 2009 is to be assumed to apply to the share.
- (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 521E(4) of CTA 2009.
- (4) This section is without prejudice to the generality of section 371SO.

### **371SR Double taxation relief: counteraction notices**

- (1) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for giving of counteraction notice) would or might be met in relation to the CFC in relation to the relevant accounting period.
- (2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

## **CHAPTER 20**

### RESIDENCE OF CFCs

#### **371TA The basic rule**

- (1) For the purposes of this Part a CFC is taken to be resident for an accounting period (“the relevant accounting period”) in—
  - (a) the territory determined by applying section 371TB, or
  - (b) if no territory can be determined by applying that section—
    - (i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or
    - (ii) otherwise, the territory in which the CFC is incorporated or formed.
- (2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).
- (3) This section is subject to section 371KC and step 1 in section 371NB(1).

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### **371TB How to determine the territory in which the CFC is resident**

- (1) The CFC is taken to be resident in the territory under the law of which, at all times during the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.
- (2) If there are two or more territories (each of which is called an “eligible territory”) falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.
- (3) To determine that territory, go through the following subsections.  
If two or more subsections apply, the earlier or earliest subsection takes precedence.
- (4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371TC(9)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.
- (5) If, at all times during the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.
- (6) If—
  - (a) at all times during the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and
  - (b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.  
For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.
- (7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.  
For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.
- (8) If, in accordance with section 371TC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.
- (9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371TC(6) to (8)), the CFC is taken to be resident in that territory.

### **371TC Elections and designations about residence**

- (1) An election under section 371TB(8)—
  - (a) may be made only by a company or companies determined under subsection (2) or (3),
  - (b) must be made by notice to an officer of Revenue and Customs,
  - (c) must be made no later than 12 months after the end of the relevant accounting period,

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- (d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period,
  - (e) must be signed on behalf of each company making the election, and
  - (f) is irrevocable.
- (2) A company may make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.
- (3) Two or more companies may together make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.
- (4) In subsections (2) and (3) “X%” means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.
- (5) In subsections (2) to (4) references to apportioned percentages of the CFC's chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).
- (6) A designation under section 371TB(9) is irrevocable.
- (7) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.
- (8) The notice must specify—
- (a) the date on which the designation was made,
  - (b) the CFC's name,
  - (c) the relevant accounting period, and
  - (d) the territory designated.
- (9) An election or designation has effect in relation to—
- (a) the relevant accounting period, and
  - (b) each successive accounting period of the CFC until subsection (10) applies to an accounting period,
- regardless of any change in the persons who have interests in the CFC or any change in those interests.
- (10) This subsection applies to an accounting period (“the later period”) if—
- (a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371TB(1) in relation to the later period, or
  - (b) some other territory also falls within section 371TB(1) in relation to the later period.



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## CHAPTER 21

### MANAGEMENT

#### 371UA Introduction to Chapter

- (1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.
- (2) In this Chapter—
  - “closure notice” means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),
  - “discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule), and
  - “the Taxes Acts” has the same meaning as in TMA 1970.

#### 371UB Application of the Taxes Acts to the CFC charge

- (1) The provision of step 5 in section 371BC(1) 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) This is subject to—
  - (a) the provisions of the Taxes Acts, and
  - (b) any necessary modifications.
- (3) The enactments referred to 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) In particular, TMA 1970 is to have effect as if—
  - (a) any reference to corporation tax included a reference to a sum charged at step 5 in section 371BC(1) as if it were an amount of corporation tax, and
  - (b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profits in respect of which the company is charged at step 5 in section 371BC(1).
- (5) Nothing in—
  - (a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or
  - (b) Schedule 1A to TMA 1970 (claims or elections not included in returns),applies to an election under section 371TB(8).

#### 371UC Just and reasonable apportionments

- (1) This section applies if—

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- (a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371QC(2), and
  - (b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.
- (2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.
- (3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.
- (4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

### **371UD Relief against sum charged**

- (1) Subsection (2) applies if (apart from subsection (2)) a chargeable company in relation to a CFC's accounting period is entitled, or on the making of a claim would be entitled, to a deduction in respect of a relevant allowance for the relevant corporation tax accounting period.
- (2) The company may make a claim under this subsection for relief in respect of the relevant allowance.
- (3) If the company makes a claim, the relief is given by setting off the relevant sum against the sum charged on the company at step 5 in section 371BC(1).
- (4) “The relevant sum” is the sum equal to corporation tax at the appropriate rate on so much of the relevant allowance as is specified in the claim.
- (5) So much of the relevant allowance as is specified in the claim is to be taken for the purposes of the Tax Acts as having been allowed as a deduction in accordance with the appropriate provision of those Acts.
- (6) No other relief is available against a sum charged on a company at step 5 in section 371BC(1).
- (7) In this section—
- (a) “the appropriate rate” and “the relevant corporation tax accounting period” have the meaning given by section 371BC(3), and
  - (b) “relevant allowance” means—
    - (i) any loss to which section 37 or 62(1) to (3) of CTA 2010 applies,
    - (ii) any qualifying charitable donation,
    - (iii) any expenses of management to which section 1219(1) of CTA 2009 applies,
    - (iv) any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012,
    - (v) any excess to which section 260(3) of CAA 2001 applies,
    - (vi) any amount available to the company by way of group relief, or
    - (vii) any non-trading deficit on the company's loan relationships.
- (8) But, in relation to a sum charged on a company by virtue of section 371BH(2), in this section—

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- (a) “the appropriate rate” means the rate given by section 371BH(3)(a), and
- (b) “relevant allowance” means any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012.

### **371UE Appeals affecting more than one person**

- (1) This section applies if—
  - (a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and
  - (b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.
- (2) Each of the following is a “relevant appeal”—
  - (a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and
  - (b) an appeal under paragraph 48 of that Schedule against a discovery assessment.
- (3) The appeal is to be conducted as follows.
- (4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.
- (5) The tribunal must determine the question separately from any other questions in the proceedings.
- (6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

### **371UF Recovery of sum charged from other UK resident companies**

- (1) This section applies if a sum charged on a company (“the defaulting company”) at step 5 in section 371BC(1) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.
- (2) An officer of Revenue and Customs may give a notice of liability to another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.
- (3) If such a notice is given to a company (“the responsible company”), the following are payable by the responsible company—
  - (a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,
  - (b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and
  - (c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).
- (4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.
- (5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

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## CHAPTER 22

### SUPPLEMENTARY PROVISION

#### 371VA Definitions

In this Part—

“accounting period”, in relation to a CFC, is to be read in accordance with section 371VB,

“accounting profits”, in relation to a CFC, is to be read in accordance with sections 371VC and 371VD,

“arrangement” includes—

- (a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and
- (b) a series of arrangements or a part of an arrangement,

“assumed taxable total profits”, in relation to a CFC, is to be read in accordance with section 371SB(1) to (6),

“assumed total profits”, in relation to a CFC, is to be read in accordance with section 371SB(9), subject to section 371DA(2),

“banking business” means the business of—

- (a) banking, deposit-taking, money-lending or debt-factoring, or
- (b) any activity similar to an activity falling within paragraph (a),

“CFC” is to be read in accordance with section 371AA(3), subject to sections 371RC and 371RE(2) and regulations under section 371RF(4),

“the CFC charge” is to be read in accordance with section 371AA(1),

“chargeable company”, in relation to a CFC's accounting period, means a company which is a chargeable company for the purposes of step 4 in section 371BC(1),

“chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3),

“company” is to be read subject to section 371VE,

“company tax return” means a return required to be made under Schedule 18 to FA 1998,

“contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

“control” is to be read in accordance with sections 371RB and 371RE, subject to section 371RF,

“the corporation tax assumptions” is to be read in accordance with section 371SC,

“creditable tax”, in relation to a CFC, is to be read in accordance with section 371PA,

“the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

“insurance business” means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

“intellectual property” means—

- (a) any patent, trade mark, registered design, copyright or design right, or

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- (b) any licence or other right in relation to anything falling within paragraph (a),
- “interest”, as in an interest in a company, is to be read in accordance with section 371VH,
- “the local tax amount”, in relation to a CFC, means the amount of tax determined at step 2 in section 371NB(1),
- “non-trading finance profits” is to be read in accordance with section 371VG,
- “non-trading income” means income which is not trading income,
- “property business profits” is to be read in accordance with section 371VI,
- “relevant finance lease” means—
- (a) a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances), or
- (b) a short lease for the purposes of that Part which meets the finance lease test in section 70N of that Act,
- and includes a part of such a lease,
- “relevant interest” is to be read in accordance with Chapter 15,
- “tax advantage” has the meaning given by section 1139 of CTA 2010,
- “trading finance profits” is to be read in accordance with section 371VG,
- “trading income”, in relation to a CFC, means income brought into account in determining the CFC's trading profits for the accounting period in question,
- “trading profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income),
- “UK connected capital contribution”, in relation to a CFC, means any capital contribution to the CFC made (directly or indirectly) by a UK resident company connected with the CFC (whether in relation to an issue of shares in the CFC or otherwise), and
- “UK permanent establishment”, in relation to a non-UK resident company, means a permanent establishment which the company has in the United Kingdom and through which it carries on a trade in the United Kingdom.

### **371VB Accounting periods**

- (1) This section applies for the purposes of this Part.
- (2) An accounting period of a CFC begins—
- (a) when the CFC becomes a CFC, or
- (b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.
- (3) An accounting period of a CFC comes to an end on the occurrence of any of the following—
- (a) the CFC ceasing to be a CFC,
- (b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,
- (c) the CFC ceasing to have any source of income at all, or

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- (d) a company which has a relevant interest in the CFC ceasing to have any relevant interest in the CFC at all or ceasing to be within the charge to corporation tax.
- (4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.
- (5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.
- (6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.
- (7) Subsection (8) applies if after the giving of a notice under subsection (6)—
  - (a) further facts come to the knowledge of an officer of Revenue and Customs, and
  - (b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.
- (8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.
- (9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

### **371VC Accounting profits**

- (1) This section and section 371VD (with which this section needs to be read) apply for the purposes of this Part.
- (2) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.
- (3) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (4) and (5)).
- (4) Subsection (5) applies if—
  - (a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or
  - (b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.
- (5) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—
  - (a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or
  - (b) if paragraph (a) cannot be applied, international accounting standards.

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- (6) Each of the following is an “acceptable accounting practice”—
  - (a) international accounting standards,
  - (b) UK generally accepted accounting practice, and
  - (c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.
- (7) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.
- (8) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

### **371VD Adjustments to accounting profits**

- (1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.
- (2) The following are to be ignored in determining the profits—
  - (a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions),
  - (b) any property business profits or property business losses, and
  - (c) any capital profits or losses.
- (3) In subsection (2)(b) “property business losses” means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.
- (4) The profits are to include—
  - (a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and
  - (b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.
- (5) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (4)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
- (6) In subsection (4)(b) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.
- (7) Part 4 (transfer pricing) applies as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.
- (8) But subsection (7) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

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### **371VE Cell companies etc**

- (1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.
- (2) An “unincorporated cell” is an identifiable part (by whatever name known) of a non-UK resident company which meets the following condition.
- (3) The condition is that, under the law under which the non-UK resident company is incorporated or formed, under the articles of association or other document regulating the non-UK resident company or under any arrangement entered into by or in relation to the non-UK resident company—
  - (a) assets and liabilities of the non-UK resident company may be wholly or mainly allocated to the part of the company in question,
  - (b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
  - (c) there are members of the non-UK resident company who have rights in relation to the company's assets which cover only or mainly assets so allocated.
- (4) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (2) as a company for the purposes of this Part; but its assets and liabilities are to be apportioned between it and the unincorporated cell (and any other unincorporated cells which are part of the company) on a just and reasonable basis.
- (5) An “incorporated cell” is an entity (by whatever name known) established under the articles of association or other document regulating a non-UK resident company—
  - (a) which, under the law under which the non-UK resident company is incorporated or formed, has a legal personality distinct from that of the non-UK resident company, but
  - (b) which is not itself a company (ignoring this section).
- (6) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (5) as a company for the purposes of this Part.
- (7) The Treasury may by regulations provide for this Part to apply in relation to—
  - (a) parts of companies falling within specified descriptions, or
  - (b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),
 as if they were non-UK resident companies.
- (8) Regulations under subsection (7) may add to, repeal or otherwise amend subsections (1) to (6).

### **371VF Connected persons etc**

- (1) This section applies for the purposes of this Part.
- (2) The following provisions of CTA 2010 apply—
  - (a) section 882(2) to (7) (“associated” persons), and
  - (b) section 1122 (“connected” persons).
- (3) A person is “related” to a CFC if—
  - (a) the person is connected or associated with the CFC,



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- (b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 3 in section 371BC(1) were that step required to be taken in relation to the accounting period in question, or
- (c) if the CFC is a CFC by virtue of section 371RC, the person is connected or associated with either or both of the controllers.

### **371VG Finance profits**

- (1) In this Part “non-trading finance profits”, in relation to a CFC, means any amounts—
  - (a) which are included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under—
    - (i) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), or
    - (ii) Part 9A of that Act (company distributions), or
  - (b) which—
    - (i) are included in the CFC's assumed total profits for the accounting period in question on the basis that they arise from an arrangement which would be a relevant finance lease, but
    - (ii) are not trading profits.
- (2) Subsection (1) is subject to subsection (3) and sections 371CB(2) and (8), 371CE(2) and 371IA(9).
- (3) Any credits or debits which are to be brought into account in determining the CFC's property business profits for the accounting period in question in accordance with section 371VI(2) are not to be brought into account in determining the CFC's non-trading finance profits.
- (4) In this Part “trading finance profits”, in relation to a CFC, means any amounts included in the CFC's assumed total profits for the accounting period in question—
  - (a) which are trading profits by virtue of section 297, 573 or 931W of CTA 2009, or
  - (b) which are trading profits arising from an arrangement which would be a relevant finance lease.
- (5) Subsection (4) is subject to section 371CE(2).

### **371VH Interests in companies**

- (1) This section applies for the purposes of this Part.
- (2) The following persons have an “interest” in a company—
  - (a) any person who has, or is entitled to acquire, share capital or voting rights in the company,
  - (b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
  - (c) any person who is entitled—
    - (i) to direct how income or assets of the company are to be applied,
    - (ii) to have such income or assets applied on the person's behalf, or

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- (iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and
  - (d) any other person who, either alone or together with other persons, has control of the company.
- (3) In subsection (2) references to a person being entitled to do anything cover cases in which—
- (a) a person is presently entitled to do it at a future date, or
  - (b) a person will at a future date be entitled to do it.
- (4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).
- (5) Subsection (6) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.
- (6) The person is not to have an interest in the company under subsection (2)(c) by virtue of that entitlement (or supposed ability) unless the default has occurred.
- (7) Rights which a person has as a loan creditor of a company are to be ignored for the purposes of subsection (2).
- (8) In subsection (7)—
- “loan creditor” has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section, and
  - “rights” does not include any rights excluded from subsection (7) by subsection (10).
- (9) Subsection (10) applies if, in accordance with generally accepted accounting practice, a loan creditor divides its rights and liabilities under a loan relationship to which it is a party as mentioned in section 415(1) of CTA 2009 (loan relationships with embedded derivatives).
- For this purpose, if a loan creditor does not prepare its accounts in accordance with generally accepted accounting practice, assume that it prepares IAS accounts (within the meaning of section 1127 of CTA 2010).
- (10) Any rights falling within section 415(1)(b) of CTA 2009 are to be excluded from subsection (7).
- (11) Subsections (12) and (13) apply if—
- (a) apart from subsection (12), a person has, or two or more persons together have, an interest in a company (“company 1”), and
  - (b) company 1 has an interest in another company (“company 2”).
- (In paragraph (b) “interest” includes an interest by virtue of subsection (12).)
- (12) The person or persons mentioned in subsection (11)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).
- (13) For the purposes of references to one person's interest in a company being the same as another person's interest—

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- (a) the person mentioned in subsection (11)(a), or
- (b) each of the persons so mentioned,

is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.

- (14) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

### **371VI Property business profits**

- (1) Subject to what follows, in this Part “property business profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).
- (2) Any credits or debits—
- (a) which are brought into account under Part 5 of CTA 2009 in determining the CFC's assumed total profits for the accounting period, and
  - (b) which fall within subsection (3) or (5),
- are to be brought into account in determining the CFC's property business profits.
- (3) Credits and debits fall within this subsection so far as they are from a debtor relationship of the CFC where the loan which is the subject of the debtor relationship—
- (a) is made and used solely for the purposes of a relevant property business, and
  - (b) is not used to any extent for the purpose of funding (directly or indirectly)—
    - (i) a loan to any other person, or
    - (ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (4) In subsection (3) “debtor relationship” has the meaning given by section 302(6) of CTA 2009 (and does not include anything which, although not falling within section 302(1) of that Act, is treated for any purpose as if it were a debtor relationship); and “loan” is to be read accordingly.
- (5) Credits and debits fall within this subsection so far as they—
- (a) are from any derivative contract or other arrangement entered into by the CFC as a hedge of risk in connection with a relevant property business, and
  - (b) are attributable to that hedge of risk.
- (6) “Relevant property business” means a UK property business or overseas property business of the CFC, profits of which are included in the CFC's property business profits apart from subsection (2).

### **371VJ Regulations**

Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.]

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## PART 10

### GENERAL PROVISIONS

#### *Subordinate legislation*

#### **372 Orders and regulations**

- (1) Any power of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make any order or regulations under this Act is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Subsection (2) does not apply—
  - (a) in relation to regulations under section 7 (double taxation relief: general regulations),
  - (b) in relation to regulations under section 354(1) or 359(2) (offshore funds) if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons,
  - (c) in relation to an order under section 377(2) (transitional or saving provision in connection with coming into force of this Act), or
  - (d) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.
- (4) Section 828 of ICTA (which includes provision about orders made before 1 April 2010 under provisions of the Corporation Tax Acts not contained in ICTA) does not apply in relation to an order made by the Treasury under this Act before 1 April 2010.

#### *Interpretation*

#### **373 Abbreviated references to Acts**

In this Act—

- “CAA 2001” means the Capital Allowances Act 2001,
- “CTA 2009” means the Corporation Tax Act 2009,
- “CTA 2010” means the Corporation Tax Act 2010,
- “FA”, followed by a year, means the Finance Act of that year,
- “F(No.2)A”, followed by a year, means the Finance (No. 2) Act of that year,
- “ICTA” means the Income and Corporation Taxes Act 1988,
- “ITA 2007” means the Income Tax Act 2007,
- “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,
- “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005,
- “TCGA 1992” means the Taxation of Chargeable Gains Act 1992, and
- “TMA 1970” means the Taxes Management Act 1970.

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### *Final provisions*

#### **374 Minor and consequential amendments**

Schedule 8 (minor and consequential amendments, including amendments for purposes connected with other tax law rewrite Acts) has effect.

#### **Commencement Information**

- II** S. 374 partly in force; s. 374 in force for specified purposes at Royal Assent and in force for further specified purposes at 1.4.2010 see s. 381(2)(d)

#### **375 Power to make consequential provision**

- (1) The Treasury may by order make such provision as the Treasury consider appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) may not be exercised after 31 March 2013.
- (3) An order under this section may amend, repeal or revoke any provision made by or under an Act.
- (4) An order under this section may contain provision having retrospective effect.
- (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (6) In subsection (3) “Act” includes an Act of the Scottish Parliament and Northern Ireland legislation.

#### **376 Power to undo changes**

- (1) The Treasury may by order make provision, in relation to a case in which the Treasury consider that a provision of this Act changes the effect of the law, for the purpose of returning the effect of the law to what it would have been if this Act had not been passed.
- (2) The power conferred by subsection (1) may not be exercised after 31 March 2013.
- (3) An order under this section may amend, repeal or revoke any provision made by or under—
  - (a) this Act, or
  - (b) any other Act.
- (4) An order under this section may contain provision having retrospective effect.
- (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (6) In subsection (3)(b) “Act” includes an Act of the Scottish Parliament and Northern Ireland legislation.

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### **377 Transitional provisions and savings**

- (1) Schedule 9 (transitional provisions and savings) has effect.
- (2) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.
- (3) An order under this section may contain provision having retrospective effect.

#### **Commencement Information**

- I2** S. 377 partly in force; s. 377(1) in force at 1.4.2010 and s. 377(2)(3) in force at Royal Assent see s. 381(1)(2)(g)

### **378 Repeals and revocations**

- (1) Schedule 10 (repeals and revocations, including of spent enactments and including repeals for purposes connected with other tax law rewrite Acts) has effect.
- (2) If—
  - (a) CTA 2010 repeals or revokes a provision and the repeal or revocation is for corporation tax purposes only (see section 1181(2) of that Act), and
  - (b) this Act also repeals or revokes the provision,
 the repeal or revocation of the provision by this Act is for all purposes other than corporation tax purposes.

### **379 Index of defined expressions**

- (1) Schedule 11 (index of defined expressions that apply for purposes of Parts 2 to 8) has effect.
- (2) That Schedule lists the places where some of the expressions used in Parts 2 to 8 are defined or otherwise explained.

### **380 Extent**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).
- (2) An amendment, repeal or revocation contained in Schedule 7, 8 or 10 has the same extent as the provision amended, repealed or revoked.

### **381 Commencement**

- (1) This Act comes into force on 1 April 2010 and has effect—
  - (a) for corporation tax purposes, for accounting periods ending on or after that day,
  - (b) for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and
  - (c) for petroleum revenue tax purposes, for chargeable periods beginning on or after 1 July 2010.

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(2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—

- (a) section 372,
- (b) section 373,
- (c) the amendments in TCGA 1992 and ITA 2007 made by Part 13 of Schedule 8,
- (d) section 374 so far as relating to those amendments,
- (e) section 375,
- (f) section 376,
- (g) section 377(2) and (3),
- (h) section 380,
- (i) this section, and
- (j) section 382.

### **382 Short title**

This Act may be cited as the Taxation (International and Other Provisions) Act 2010.

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## SCHEDULES

### SCHEDULE 1

Section 364

#### OIL ACTIVITIES: NEW CHAPTER 16A OF PART 2 OF ITTOIA 2005

- 1 ITTOIA 2005 is amended as follows.
- 2 After section 225 insert—

#### “CHAPTER 16A

#### OIL ACTIVITIES

#### *Basic definitions*

#### **225A Meaning of “oil extraction activities”**

- (1) In this Chapter “oil extraction activities” means activities within any of subsections (2) to (5) (but see also section 225M(6)).
- (2) Activities of a person in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for that person.
- (3) Activities of a person in extracting, or causing to be extracted for that person, oil at any place in the United Kingdom or a designated area under rights which—
  - (a) authorise the extraction, and
  - (b) are held by that person.
- (4) Activities of a person in transporting, or causing to be transported for that person, oil extracted at any such place not on dry land under rights which—
  - (a) authorise the extraction, and
  - (b) are held by that person,
 if the transportation meets condition A or B (see subsections (6) and (7)).
- (5) Activities of a person in effecting, or causing to be effected for that person, the initial treatment or initial storage of oil won from any oil field under rights which—
  - (a) authorise its extraction, and
  - (b) are held by that person.
- (6) Condition A is that the transportation is to the place where the oil is first landed in the United Kingdom.
- (7) Condition B is that the transportation—
  - (a) is to the place in the United Kingdom, or



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- (b) in the case of oil first landed in another country, is to the place in that or any other country (other than the United Kingdom), at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).
- (8) The definition of “initial storage” in section 12(1) of OTA 1975 applies for the purposes of this section.
- (9) But in its application for those purposes in relation to the person mentioned in subsection (5) and to oil won from any one oil field, that definition is to have effect as if the reference to the maximum daily production rate of oil for the field mentioned in that definition were to a share of that maximum daily production rate proportionate to that person's share of the oil won from that field.
- (10) In this section “initial treatment” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

#### **225B Meaning of “oil rights”**

In this Chapter “oil rights” means—

- (a) rights to oil to be extracted at any place in the United Kingdom or a designated area, or
- (b) rights to interests in or to the benefit of such oil.

#### **225C Meaning of “ring fence income”**

In this Chapter “ring fence income” means income arising from oil extraction activities or oil rights.

#### **225D Meaning of “ring fence trade”**

In this Chapter “ring fence trade” means activities which—

- (a) are within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
- (b) constitute a separate trade (whether because of section 16(1) or otherwise).

#### **225E Other definitions**

In this Chapter—

“chargeable period” has the same meaning as in Part 1 of OTA 1975 (see section 1(3) of that Act),

“designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,

“oil” means any substance won or capable of being won under the authority of a licence granted under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.)), other than methane gas won in the course of operations for making and keeping mines safe,

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“oil field” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act),

“OTA 1975” means the Oil Taxation Act 1975, and

“participator” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act).

### *Oil valuation*

#### **225F Valuation where market value taken into account under section 2 of OTA 1975**

- (1) This section applies if a person disposes of oil in circumstances such that the market value of the oil—
  - (a) falls to be taken into account under section 2 of OTA 1975, otherwise than by virtue of paragraph 6 of Schedule 3 to that Act, in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (2) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil—
  - (a) as so taken into account under section 2 of that Act, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.

#### **225G Valuation where disposal not sale at arm's length**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person disposes of oil acquired by the person—
  - (a) in the course of oil extraction activities carried on by the person, or
  - (b) as a result of oil rights held by the person.
- (3) Condition B is that the disposal is not a sale at arm's length (as defined in paragraph 1 of Schedule 3 to OTA 1975).
- (4) Condition C is that section 225F does not apply in relation to the disposal.
- (5) For income tax purposes, the disposal of the oil, and its acquisition by the person to whom it was disposed of, are to be treated as having been for a consideration equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—
  - (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is disposed of as mentioned in this section, and

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- (b) paragraph 2(4) is to be treated as omitted.

### **225H Valuation where excess of nominated proceeds**

- (1) This section applies if an excess of nominated proceeds for a chargeable period—
- (a) is taken into account in calculating a person's profits under section 2(5)(e) of OTA 1975, or
  - (b) would have been so taken into account if the person were chargeable to tax under OTA 1975 in respect of an oil field.
- (2) For income tax purposes, the amount of the excess is to be added to the consideration which the person is treated as having received in respect of oil disposed of by that person in the period.

### **225I Valuation where relevant appropriation but no disposal**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person makes a relevant appropriation of oil without disposing of it.
- (3) Condition B is that the person does so in circumstances such that the market value of the oil—
- (a) falls to be taken into account under section 2 of OTA 1975 in calculating for petroleum revenue tax purposes the assessable profit or allowable loss accruing to that person in a chargeable period from an oil field, or
  - (b) would so fall but for section 10 of that Act.
- (4) For income tax purposes, the person is to be treated as having, at the time of the appropriation—
- (a) sold the oil in the course of the separate trade consisting of activities falling within the definition of “oil-related activities” in section 16(2) (oil extraction and related activities), and
  - (b) purchased it in the course of the separate trade consisting of activities not so falling.
- (5) For income tax purposes, that sale and purchase is to be treated as having been at a price equal to the market value of the oil—
- (a) as so taken into account under section 2 of OTA 1975, or
  - (b) as would have been so taken into account under that section but for section 10 of that Act.
- (6) In this section “relevant appropriation” has the meaning given by section 12(1) of OTA 1975.

### **225J Valuation where appropriation to refining etc**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that a person appropriates oil acquired by the person—
- (a) in the course of oil extraction activities carried on by the person, or

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- (b) as a result of oil rights held by the person.
- (3) Condition B is that the oil is appropriated to refining or to any use except the production purposes of an oil field (as defined in section 12(1) of OTA 1975).
- (4) Condition C is that section 225I does not apply in relation to the appropriation.
- (5) For income tax purposes—
  - (a) the person is to be treated as having, at the time of the appropriation, sold and purchased the oil as mentioned in section 225I(4)(a) and (b), and
  - (b) that sale and purchase is to be treated as having been at a price equal to the market value of the oil.
- (6) Paragraphs 2 and 3A of Schedule 3 to OTA 1975 (definition of market value of oil including light gases) apply for the purposes of this section as they apply for the purposes of Part 1 of that Act, but with the following modifications.
- (7) Those modifications are that—
  - (a) any reference in paragraph 2 to the notional delivery day for the actual oil is to be read as a reference to the day on which the oil is appropriated as mentioned in this section,
  - (b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated is to be read as a reference to its being appropriated as mentioned in this section, and
  - (c) paragraph 2(4) is to be treated as omitted.

#### *Regional development grants*

### **225K Reduction of expenditure by reference to regional development grant**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to OTA 1975 applies (transactions between connected persons or otherwise than at arm's length).
- (3) Condition B is that the expenditure incurred by the other person mentioned in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph—
  - (a) has been or is to be met by a regional development grant, and
  - (b) falls (in whole or in part) to be taken into account under Part 2 or 6 of CAA 2001 (capital allowances relating to plant and machinery or research and development).
- (4) Subsection (5) applies for the purposes of the charge to income tax on the income arising from the activities of the person mentioned in subsection (2) which are treated by section 16(1) (oil extraction and related activities) as a separate trade for those purposes.

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- (5) The expenditure mentioned in subsection (2) is to be reduced by the amount of the regional development grant mentioned in subsection (3).
- (6) In this section “regional development grant” means a grant falling within section 534(1) of CAA 2001 (Northern Ireland regional development grant).

### **225L Adjustment as a result of regional development grant**

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that expenditure incurred by a person in relation to an asset in a tax year (“the initial period”) has been or is to be met by a regional development grant.
- (3) Condition B is that, despite the provisions of section 534(2) and (3) of CAA 2001 (Northern Ireland regional development grants) and section 225K of this Act, in determining that person's liability to income tax for the initial period, the whole or some part of that expenditure falls to be taken into account under Part 2 or 6 of CAA 2001.
- (4) Condition C is that—
  - (a) expenditure on the asset becomes allowable under section 3 or 4 of OTA 1975 in a tax year (an “adjustment period”) subsequent to the initial period, or
  - (b) the proportion of any such expenditure which is allowable in an adjustment period is different as compared with the initial period.
- (5) There is to be redetermined for the purposes of subsections (7) and (8) the amount of the expenditure mentioned in subsection (2) which would have been taken into account as mentioned in subsection (3) if the circumstances mentioned in subsection (4) had existed in the initial period.
- (6) According to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3), the difference is referred to in subsections (7) and (8) as the increase or the reduction in the allowance.
- (7) If there is an increase in the allowance, an amount of capital expenditure equal to the increase is to be treated, for the purposes of Part 2 or 6 of CAA 2001, as having been incurred by the person concerned in the adjustment period on an extension of, or addition to, the asset mentioned in subsection (2).
- (8) If there is a reduction in the allowance, the person concerned is to be treated, for the purpose of determining that person's liability to income tax, as having received in the adjustment period, as income of the trade in connection with which the expenditure mentioned in subsection (2) was incurred, a sum equal to the amount of the reduction in the allowance.
- (9) In this section “regional development grant” has the meaning given by section 225K(6).

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### *Tariff receipts etc*

#### **225M Tariff receipts etc**

- (1) Subsection (5) applies to a sum which meets conditions A, B and C.
- (2) Condition A is that the sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator in an oil field.
- (3) Condition B is that the sum constitutes consideration in the nature of income rather than capital.
- (4) Condition C is that the sum would not, but for subsection (5), be treated as mentioned in that subsection.
- (5) The sum is to be treated as a receipt of the separate trade mentioned in section 16(1) (oil extraction and related activities).
- (6) So far as they would not otherwise be so treated, the activities—
  - (a) of a participator in an oil field, or
  - (b) of a person connected with the participator,
 in making available an asset in a way which gives rise to tariff receipts or tax-exempt tariffing receipts of the participator are to be treated for the purposes of this Chapter as oil extraction activities.
- (7) In determining for the purposes of subsection (2) whether a sum constitutes a tariff receipt or tax-exempt tariffing receipt of a person who is a participator, no account may be taken of any sum which—
  - (a) is in fact received or receivable by a person connected with the participator, and
  - (b) constitutes a tariff receipt or tax-exempt tariffing receipt of the participator.
 But in relation to the person by whom such a sum is actually received, subsection (2) has effect as if the person were a participator and as if condition A were met.
- (8) References in this section to a person connected with a participator include a person with whom the person is associated, within the meaning of paragraph 11 of Schedule 2 to the Oil Taxation Act 1983, but section 878(5) of this Act (application of definition of “connected” persons) does not apply for the purposes of this section.
- (9) In this section—
 

“tax-exempt tariffing receipt” has the meaning given by section 6A(2) of the Oil Taxation Act 1983, and

“tariff receipt” has the same meaning as in that Act.

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### *Abandonment guarantees*

#### **225N Expenditure on and under abandonment guarantees**

- (1) Subsection (2) applies if, as a result of section 3(1)(hh) of OTA 1975 (obtaining abandonment guarantee), expenditure incurred by a participator in an oil field is allowable (in whole or in part) for petroleum revenue tax purposes under section 3 of that Act.
- (2) So far as that expenditure is so allowable, it is to be allowed as a deduction in calculating the participator's ring fence income.
- (3) Subsection (4) applies if a payment is made by the guarantor under an abandonment guarantee.
- (4) So far as any expenditure for which the relevant participator is liable is met, directly or indirectly, out of the payment, the expenditure is not to be regarded for income tax purposes as having been incurred by the relevant participator or any other participator in the oil field concerned.
- (5) See also section 225P (payment under abandonment guarantee not immediately applied).
- (6) In this Chapter—
  - “abandonment guarantee” has the same meaning as it has for the purposes of section 105 of FA 1991 (see section 104 of that Act), and
  - “the guarantor” and “the relevant participator” have the same meaning as in section 104 of that Act.

#### **225O Relief for reimbursement expenditure under abandonment guarantees**

- (1) This section applies if—
  - (a) a payment (“the guarantee payment”) is made by the guarantor under an abandonment guarantee,
  - (b) as a result of the making of the guarantee payment, the relevant participator becomes liable under the terms of the abandonment guarantee to pay any sum to the guarantor, and
  - (c) expenditure is incurred, or consideration in money's worth is given, by the relevant participator in or towards meeting that liability.
- (2) In this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1)(c) or consideration (or the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure is to be read accordingly.
- (3) So much of any reimbursement expenditure as constitutes qualifying expenditure (see subsection (4)) is to be allowed as a deduction in calculating the relevant participator's ring fence income; and no part of the expenditure which is so allowed is to be otherwise deductible or allowable by way of relief for income tax purposes.

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- (4) The amount of reimbursement expenditure incurred in any tax year by the relevant participator which constitutes qualifying expenditure is determined by the formula—

$$A \times \frac{B}{C}$$

where—

A is the reimbursement expenditure incurred in the tax year,

B is so much of the expenditure represented by the guarantee payment as, had it been incurred by the relevant participator, would have been taken into account (by way of capital allowance or a deduction) in calculating the relevant participator's ring fence income, and

C is the total of the sums which, at or before the end of the tax year, the relevant participator is or has become liable to pay to the guarantor as mentioned in subsection (1)(b).

But this is subject to subsection (5).

- (5) In relation to the guarantee payment, the total of the reimbursement expenditure (whenever incurred) which constitutes qualifying expenditure may not exceed whichever is the less of B and C in subsection (4).
- (6) Any limitation on qualifying expenditure under subsection (5) is to be applied to the expenditure of a later tax year in preference to an earlier one.
- (7) For the purposes of this section, the expenditure represented by the guarantee payment is any expenditure—
- (a) for which the relevant participator is liable, and
  - (b) which is met, directly or indirectly, out of the guarantee payment (and which, accordingly, because of section 225N(4) is not to be regarded as expenditure incurred by the relevant participator).
- (8) See also—
- (a) section 225P (payment under abandonment guarantee not immediately applied), and
  - (b) section 225Q which excludes amounts from subsection (1).

### **225P Payment under abandonment guarantee not immediately applied**

- (1) This section applies if—
- (a) a payment made by the guarantor under an abandonment guarantee is not immediately applied in meeting any expenditure,
  - (b) the payment is for any period invested (either specifically or together with payments made by persons other than the guarantor) so as to be represented by, or by part of, the assets of a fund or account, and
  - (c) at a subsequent time, any expenditure for which the relevant participator is liable is met out of the assets of the fund or account.
- (2) The references in sections 225N(4) and 225O(7) to expenditure which is met, directly or indirectly, out of the payment are to be read as references to so much of the expenditure for which the relevant participator is liable as



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is met out of those assets of the fund or account which, at the subsequent time mentioned in subsection (1)(c), it is just and reasonable to attribute to the payment.

### **225Q Amounts excluded from section 225O(1)**

- (1) This section applies if—
  - (a) the whole of the guarantee payment mentioned in section 225O, or of the assets which under section 225P are attributed to the guarantee payment, is not applied in meeting liabilities of the relevant participator so mentioned which fall within section 104(1)(a) and (b) of FA 1991, and
  - (b) a sum representing the unapplied part of the guarantee payment or of those assets is repaid, directly or indirectly, to the guarantor so mentioned.
- (2) Any liability of the relevant participator to repay that sum is to be excluded in determining the total liability of the relevant participator which falls within section 225O(1)(b).
- (3) The repayment to the guarantor of that sum is not to be regarded as expenditure incurred by the relevant participator as mentioned in section 225O(1)(c).

### *Abandonment expenditure*

### **225R Introduction to sections 225S and 225T**

- (1) Sections 225S and 225T apply if—
  - (a) paragraph 2A of Schedule 5 to OTA 1975 applies, or would apply if a claim under paragraph 2A(2) of that Schedule were made, and
  - (b) the default payment falls (in whole or part) to be attributed to the contributing participator under paragraph 2A(2) of that Schedule.
- (2) In section 225S “the additional abandonment expenditure” means the amount which is attributed to the contributing participator as mentioned in subsection (1)(b) (whether representing the whole or only part of the default payment).
- (3) In this Chapter “default payment”, “the defaulter” and “contributing participator” have the same meaning as in paragraph 2A of Schedule 5 to OTA 1975.

### **225S Relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure**

- (1) Relief by way of capital allowance, or a deduction in calculating ring fence income, is to be available to the contributing participator in respect of the additional abandonment expenditure if any such relief or deduction would have been available to the defaulter if—
  - (a) the defaulter had incurred the additional abandonment expenditure, and

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- (b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.
- (2) The basis of qualification for or entitlement to any relief or deduction which is available to the contributing participator under this section is to be determined on the assumption that the conditions in subsection (1)(a) and (b) are met.
- (3) But, subject to subsection (2), any such relief or deduction is to be available in the same way as if the additional abandonment expenditure had been incurred by the contributing participator for the purposes of the ring fence trade carried on by the contributing participator.

### **225T Reimbursement by defaulter in respect of certain abandonment expenditure**

- (1) This section applies if expenditure is incurred, or consideration in money's worth is given, by the defaulter in reimbursing the contributing participator in respect of, or otherwise making good to the contributing participator, the whole or any part of the default payment.
- (2) In this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1) or consideration (or the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure is to be read accordingly.
- (3) Reimbursement expenditure is to be allowed as a deduction in calculating the defaulter's ring fence income (but this is subject to subsection (6)).
- (4) Reimbursement expenditure received by the contributing participator is to be treated as a receipt (in the nature of income) of the participator's ring fence trade for the relevant tax year (but this is subject to subsection (6)).
- (5) Any additional assessment to income tax required in order to take account of the receipt of reimbursement expenditure by the contributing participator may be made at any time not later than 4 years after the end of the calendar year in which the reimbursement expenditure is so received.
- (6) In relation to a particular default payment, reimbursement expenditure incurred at any time—
  - (a) is to be allowed as mentioned in subsection (3), and
  - (b) is to be taken into account as a result of subsection (4) in calculating the contributing participator's ring fence income,
 only so far as, when aggregated with any reimbursement expenditure previously incurred in respect of that default payment, it does not exceed so much of the default payment as falls to be attributed to the contributing participator as mentioned in section 225R(1)(b).
- (7) The incurring of reimbursement expenditure is not to be regarded, by virtue of section 532 of CAA 2001 (the general rule excluding contributions), as the meeting of the expenditure of the contributing participator in making the default payment.
- (8) In subsection (4) “the relevant tax year” means—

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- (a) the tax year in which the reimbursement expenditure is received by the contributing participator, or
- (b) if the contributing participator's ring fence trade is permanently discontinued before the receipt of the reimbursement expenditure, the last tax year in which that trade was carried on.

#### *Interest on repayment of APRT*

### **225U Interest on repayment of APRT**

- (1) Subsection (2) applies if interest is paid to a participator under paragraph 10(4) of Schedule 19 to FA 1982 (interest on advance petroleum revenue tax which becomes repayable).
- (2) The interest paid is to be disregarded in calculating the participator's income for income tax purposes.”

## SCHEDULE 2

Section 365

### ALTERNATIVE FINANCE ARRANGEMENTS

#### **PART 1**

##### NEW PART 10A OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 After Part 10 insert—

#### **“PART 10A**

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Introduction*

#### **Introduction**

564A) This Part—

- (a) contains provisions about the treatment as interest for certain income tax purposes of alternative finance return under alternative finance arrangements with financial institutions (see sections 564M to 564Q), and
  - (b) contains some special provisions about the treatment of investment bond arrangements (see sections 564R to 564U) and some other rules about alternative finance arrangements (see sections 564V to 564Y).
- (2) In this Part “alternative finance arrangements” means—
- (a) purchase and resale arrangements,

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- (b) diminishing shared ownership arrangements,
- (c) deposit arrangements,
- (d) profit share agency arrangements, and
- (e) investment bond arrangements.

(3) In this Part—

- (a) “purchase and resale arrangements” means arrangements to which section 564C applies,
- (b) “diminishing shared ownership arrangements” means arrangements to which section 564D applies,
- (c) “deposit arrangements” means arrangements to which section 564E applies,
- (d) “profit share agency arrangements” means arrangements to which section 564F applies, and
- (e) “investment bond arrangements” means arrangements to which section 564G applies.

(4) For the meaning of “alternative finance return”, see sections 564I to 564L.

(5) For the meaning of “financial institution”, see section 564B.

(6) Also, see section 366 of TIOPA 2010 (power to extend this Part and other provisions to other arrangements by order).”

3 After section 564A insert—

**“564B Meaning of “financial institution”**

(1) In this Part “financial institution” means—

- (a) a bank, as defined by section 991,
- (b) a building society,
- (c) a wholly-owned subsidiary—
  - (i) of a bank within paragraph (a), or
  - (ii) of a building society,
- (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
- (e) a bond-issuer, within the meaning of section 564G, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
- (f) a person authorised in a jurisdiction outside the United Kingdom—
  - (i) to receive deposits or other repayable funds from the public, and
  - (ii) to grant credits for its own account,
- (g) an insurance company as defined in section 431(2) of ICTA, or
- (h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.

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(2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—

- (a) the parent or persons acting on behalf of the parent, and
- (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.”

4 After section 564B insert—

*“Arrangements that are alternative finance arrangements*

### **564C Purchase and resale arrangements**

(1) This section applies to arrangements if—

- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
- (b) under the arrangements—
  - (i) the first purchaser purchases an asset and sells it to the second purchaser,
  - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),
  - (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
  - (iv) the second purchase price exceeds the first purchase price, and
  - (v) the excess equates, in substance, to the return on an investment of money at interest.

(2) The circumstances are that—

- (a) the first purchaser is a financial institution, and
- (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.

(3) In this section—

“the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and  
“the second purchase price” means the amount payable by the second purchaser in respect of the sale.

(4) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from this section and sections 564D to 564G).”

5 After section 564C insert—

### **“564D Diminishing shared ownership arrangements**

(1) This section applies to arrangements if under them—

- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,

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- (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
  - (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner’s beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),
  - (d) the eventual owner is to acquire the first owner’s beneficial interest (whether or not in stages) as a result of those payments,
  - (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),
  - (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
  - (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).
- (2) For the purposes of subsection (1)(a) it does not matter if—
- (a) the first owner acquires its beneficial interest from the eventual owner,
  - (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
  - (c) the first owner also has a legal interest in it.
- (3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.
- (4) The conditions are that—
- (a) the grant is not to—
    - (i) the first owner,
    - (ii) a person controlled by the first owner, or
    - (iii) a person controlled by a person who also controls the first owner, and
  - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset’s value, or
  - (b) having a share in a loss arising out of any such reduction.
- (6) This section is subject to section 564H (provision not at arm’s length: exclusion of arrangements from section 564C, this section and sections 564E to 564G).”

6 After section 564D insert—

**“564E Deposit arrangements**

- (1) This section applies to arrangements if under them—
- (a) a person (“the depositor”) deposits money with a financial institution,

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- (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
- (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
- (d) the payment is in proportion to the amount deposited by the depositor, and
- (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C and 564D, this section and sections 564F and 564G)."

7 After section 564E insert—

#### **“564F Profit share agency arrangements**

- (1) This section applies to arrangements if under them—
- (a) a person (“the principal”) appoints an agent,
  - (b) one or both of the principal and agent is a financial institution,
  - (c) the agent uses money provided by the principal with a view to producing a profit,
  - (d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
  - (e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and
  - (f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.

(2) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564E, this section and section 564G)."

8 After section 564F insert—

#### **“564G Investment bond arrangements**

- (1) This section applies to arrangements if—
- (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
  - (b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
  - (c) they specify a period at the end of which they cease to have effect (“the bond term”),
  - (d) the bond-issuer undertakes under the arrangements—
    - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,
    - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and

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- (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),
  - (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
  - (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
  - (g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),
  - (h) the arrangements are a listed security on a recognised stock exchange, and
  - (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.
- (2) For the purposes of subsection (1)—
- (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,
  - (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
  - (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but need not) be described as, or accompanied by a document described as, a declaration of trust,
  - (d) a reference to the management of assets includes a reference to disposal,
  - (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
  - (f) the amount of the additional payments may be—
    - (i) fixed at the beginning of the bond term,
    - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
    - (iii) determined in some other way,
  - (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
  - (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
  - (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.



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(3) This section is subject to section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564F and this section)."

9 After section 564G insert—

**“564H Provision not at arm's length: exclusion of arrangements from sections 564C to 564G**

(1) Arrangements to which this section applies are not—

- (a) purchase and resale arrangements,
- (b) diminishing shared ownership arrangements,
- (c) deposit arrangements,
- (d) profit share agency arrangements, or
- (e) investment bond arrangements.

(2) This section applies to arrangements if—

- (a) apart from this section they would be alternative finance arrangements,
- (b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,
- (c) any person who is an affected person for the purposes of Part 4 of that Act (“the affected person”) is entitled to—
  - (i) relevant return in relation to the arrangements, or
  - (ii) an amount representing relevant return in relation to them, and
- (d) the affected person is not subject—
  - (i) to income tax or corporation tax, or
  - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,on the relevant return or the amount representing it.

(3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.”

10 After section 564H insert—

*“Meaning of “alternative finance return”*

**564I Purchase and resale arrangements**

(1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Part.

*Status: Point in time view as at 31/12/2012.*

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- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.
- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
  - (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
  - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,
  - (c) the instalment is a part repayment of the principal of the loan with interest, and
  - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 564C have the same meaning as in that section.”

11 After section 564I insert—

**“564J Purchase and resale arrangements where return in foreign currency**

- (1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—
  - (a) by or to a person other than a company, and
  - (b) otherwise than for the purposes of a trade, profession or vocation or a property business,
 subsections (2) and (3) apply as respects that person.
- (2) The amount of the excess referred to in section 564I(2) and (5)(b) and the appropriate amount for the purposes of section 564I(3) and (4) are to be calculated in that other currency.
- (3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.”

12 After section 564J insert—

**“564K Diminishing shared ownership arrangements**

- (1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Part, except so far as subsection (2) or (3) applies to them.
- (2) This subsection applies to the payments so far as they amount to payments of the kind described in section 564D(1)(c) (payments to be made by the

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eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).

(3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.

(4) In this section “the eventual owner” has the same meaning as in section 564D.”

13 After section 564K insert—

**“564L Other arrangements**

(1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 564E(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Part.

(2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 564F(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Part.

(3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Part, but subject to subsection (4).

(4) If any part of the additional payments in respect of investment bond arrangements equates in substance to discount, that part is not treated as alternative finance return for income tax purposes.

(5) In this section “additional payments” has the same meaning as in section 564G (see subsection (1)(d)(iii) of that section).

(6) For the treatment of the part of the additional payments to which subsection (4) applies, see section 564R (treatment of discount).”

14 After section 564L insert—

*“Treatment of alternative finance return as interest etc*

**564M Treatment of alternative finance return as interest for ITTOIA 2005**

(1) Alternative finance return is treated as interest for the purposes of ITTOIA 2005.

(2) References to interest in section 380 of that Act (funding bonds) include references to alternative finance return.”

15 After section 564M insert—

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**“564N Alternative finance return under arrangements for trade or property business purposes**

- (1) This section applies so far as a person is a party to alternative finance arrangements for the purposes of—
  - (a) a trade, profession or vocation carried on by that person, or
  - (b) a property business of that person.
- (2) Alternative finance return paid by that person is treated as an expense of the trade, profession, vocation or business.
- (3) In section 58 of ITTOIA 2005—
  - (a) references to a loan include references to alternative finance arrangements, and
  - (b) references to interest include references to alternative finance return.”

16 After section 564N insert—

**“564O Relief for some alternative finance return under Chapter 1 of Part 8 etc**

- (1) Chapter 1 of Part 8 of this Act (interest payments) has effect as if—
  - (a) purchase and resale arrangements involved the making of a loan, and
  - (b) alternative finance return were interest.
- (2) Section 412 (information) has effect accordingly.”

17 After section 564O insert—

**“564P Tax relief schemes and arrangements**

Section 809ZG (tax relief schemes and arrangements) applies to alternative finance return as it applies to interest.”

18 After section 564P insert—

**“564Q Deduction of income tax at source under Part 15**

- (1) Chapter 2 of Part 15 (deduction of income tax at source: deduction by deposit-takers and building societies), and Chapter 19 of that Part so far as it has effect for the purposes of Chapter 2 of that Part, have effect as if—
  - (a) relevant alternative finance arrangements were a deposit,
  - (b) for the purposes of section 866(2)(a) such arrangements were a deposit consisting of a loan, and
  - (c) alternative finance return payable under such arrangements were interest.
- (2) For the purposes of subsection (1) alternative finance arrangements are relevant unless they are purchase and resale arrangements where the second purchaser is not a financial institution.

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- (3) In subsection (2) “the second purchaser” has the same meaning as in section 564C.
- (4) In Chapter 12 of Part 15 (funding bonds) references to interest include references to alternative finance return.
- (5) Chapters 3 to 5 of Part 15, and Chapter 19 of that Part so far as it has effect for the purposes of those Chapters, apply to alternative finance return as they apply to interest.”

19 After section 564Q insert—

*“Special rules for investment bond arrangements*

**564R Treatment of discount**

- (1) This section applies if any part of the additional payments in respect of investment bond arrangements is excluded from being alternative finance return by section 564L(4) because it equates in substance to discount.
- (2) That part is treated in accordance with section 381 of ITTOIA 2005 (discounts) unless subsection (3) applies.
- (3) If the arrangements are deeply discounted securities for the purposes of Chapter 8 of Part 4 of that Act (profits from deeply discounted securities), that part is treated in accordance with that Chapter.
- (4) In this section “additional payments” has the same meaning as in section 564G of this Act (see subsection (1)(d)(iii) of that section).”

20 After section 564R insert—

**“564S Treatment of bond-holder and bond-issuer**

- (1) This section applies for the purposes of the Income Tax Acts and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Profits accruing to the bond-issuer in connection with the bond assets are profits of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 564G.”

21 After section 564S insert—

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**“564T Treatment as securities**

- (1) Investment bond arrangements are securities for the purposes of the Income Tax Acts (including Chapters 1 to 5 of Part 7 of ITEPA 2003).
- (2) For those purposes—
  - (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and
  - (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.
- (3) In subsection (2) “the redemption payment” has the same meaning as in section 564G (see subsection (1)(d)(ii) of that section).”

22 After section 564T insert—

**“564U Arrangements not unit trust scheme or offshore fund**

Investment bond arrangements are not—

- (a) a unit trust scheme for the purposes of section 1007 of this Act, or
- (b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to income tax.”

23 After section 564U insert—

*“Other rules*

**564V Exclusion of alternative finance return from consideration for sale of assets**

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564C).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564D).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of the Income Tax Acts (apart from section 564G).
- (4) Subsections (1) to (3) do not affect the operation of any provision of the Tax Acts or TCGA 1992 that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.”

24 After section 564V insert—

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**“564W Diminishing shared ownership arrangements not partnerships**

Diminishing shared ownership arrangements are not treated as a partnership for the purposes of the Income Tax Acts.”

25 After section 564W insert—

**“564X Treatment of principal under profit share agency arrangements**

- (1) The principal under profit share agency arrangements is not treated for the purposes of the Income Tax Acts as entitled to profits to which the agent is entitled in accordance with section 564F(1)(e).
- (2) And the agent under such arrangements is treated for those purposes as entitled to those profits and the profits specified in section 564F(1)(d).
- (3) In this section “the principal” and “the agent” are to be read in accordance with section 564F.”

26 After section 564X insert—

**“564Y Provision not at arm's length: relevant return**

- (1) This section applies if arrangements to which section 564H (provision not at arm's length: exclusion of arrangements from sections 564C to 564G) applies would, but for that section, be alternative finance arrangements.
- (2) A person paying relevant return under the arrangements is not entitled to—
  - (a) any deduction in respect of the relevant return in calculating profits or other income for income tax purposes, or
  - (b) any deduction in respect of the relevant return in calculating net income.
- (3) In this section “relevant return” has the same meaning as in section 564H (see subsection (3) of that section).”

**PART 2**

NEW CHAPTER 4 OF PART 4 OF TCGA 1992

27 TCGA 1992 is amended as follows.

28 After Chapter 3 of Part 4 insert—

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## “CHAPTER 4

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Introduction*

#### **Introduction**

151H) This Chapter makes provision about the treatment of alternative finance arrangements with financial institutions and alternative finance return under such arrangements for the purposes of this Act (see sections 151T to 151Y).

- (2) In this Chapter “alternative finance arrangements” means—
- (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, and
  - (e) investment bond arrangements.
- (3) In this Chapter—
- (a) “purchase and resale arrangements” means arrangements to which section 151J applies,
  - (b) “diminishing shared ownership arrangements” means arrangements to which section 151K applies,
  - (c) “deposit arrangements” means arrangements to which section 151L applies,
  - (d) “profit share agency arrangements” means arrangements to which section 151M applies, and
  - (e) “investment bond arrangements” means arrangements to which section 151N applies.
- (4) For the meaning of “alternative finance return”, see sections 151P to 151S.
- (5) For the meaning of “financial institution”, see section 151I.
- (6) Also, see—
- (a) section 366 of TIOPA 2010 (power to extend this Chapter and other provisions to other arrangements by order), and
  - (b) Schedule 61 to FA 2009 (alternative finance investment bonds) which makes further provision about the treatment of investment bond arrangements for the purposes of this Act.”

29 After section 151H insert—

#### **“151I Meaning of “financial institution”**

- (1) In this Chapter “financial institution” means—
- (a) a bank, as defined by section 1120 of CTA 2010,
  - (b) a building society,
  - (c) a wholly-owned subsidiary—



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- (i) of a bank within paragraph (a), or
  - (ii) of a building society,
  - (d) a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act,
  - (e) a bond-issuer, within the meaning of section 151N, but only in relation to any bond assets which are rights under purchase and resale arrangements, diminishing shared ownership arrangements or profit share agency arrangements,
  - (f) a person authorised in a jurisdiction outside the United Kingdom—
    - (i) to receive deposits or other repayable funds from the public, and
    - (ii) to grant credits for its own account,
  - (g) an insurance company as defined in section 431(2) of ICTA, or
  - (h) a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle as defined in section 431(2) of ICTA.
- (2) For the purposes of subsection (1)(c) a company is a wholly-owned subsidiary of a bank or building society (“the parent”) if it has no members except—
- (a) the parent or persons acting on behalf of the parent, and
  - (b) the parent's wholly-owned subsidiaries or persons acting on behalf of the parent's wholly-owned subsidiaries.”

30 After section 151I insert—

*“Arrangements that are alternative finance arrangements*

### **151J Purchase and resale arrangements**

- (1) This section applies to arrangements if—
- (a) they are entered into between two persons (“the first purchaser” and “the second purchaser”), one or both of whom are financial institutions, and
  - (b) under the arrangements—
    - (i) the first purchaser purchases an asset and sells it to the second purchaser,
    - (ii) the sale occurs immediately after the purchase or in the circumstances mentioned in subsection (2),
    - (iii) all or part of the second purchase price is not required to be paid until a date later than that of the sale,
    - (iv) the second purchase price exceeds the first purchase price, and
    - (v) the excess equates, in substance, to the return on an investment of money at interest.
- (2) The circumstances are that—

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- (a) the first purchaser is a financial institution, and
- (b) the asset referred to in subsection (1)(b)(i) was purchased by the first purchaser for the purpose of entering into arrangements within this section.

(3) In this section—

“the first purchase price” means the amount paid by the first purchaser in respect of the purchase, and

“the second purchase price” means the amount payable by the second purchaser in respect of the sale.

(4) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from this section and sections 151K to 151N).”

31 After section 151J insert—

**“151K Diminishing shared ownership arrangements**

(1) This section applies to arrangements if under them—

- (a) a financial institution (“the first owner”) acquires a beneficial interest in an asset,
- (b) another person (“the eventual owner”) also acquires a beneficial interest in it,
- (c) the eventual owner is to make payments to the first owner amounting in aggregate to the consideration paid for the acquisition of the first owner's beneficial interest (but subject to any adjustment required for such a reduction as is mentioned in subsection (5)),
- (d) the eventual owner is to acquire the first owner's beneficial interest (whether or not in stages) as a result of those payments,
- (e) the eventual owner is to make other payments to the first owner (whether under a lease forming part of the arrangements or otherwise),
- (f) the eventual owner has the exclusive right to occupy or otherwise to use the asset, and
- (g) the eventual owner is exclusively entitled to any income, profit or gain arising from or attributable to the asset (including, in particular, an increase in its value).

(2) For the purposes of subsection (1)(a) it does not matter if—

- (a) the first owner acquires its beneficial interest from the eventual owner,
- (b) the eventual owner, or another person who is not the first owner, also has a beneficial interest in the asset, or
- (c) the first owner also has a legal interest in it.

(3) Subsection (1)(f) does not prevent the eventual owner from granting an interest or right in relation to the asset if the conditions in subsection (4) are met.

(4) The conditions are that—

- (a) the grant is not to—
  - (i) the first owner,

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- (ii) a person controlled by the first owner, or
  - (iii) a person controlled by a person who also controls the first owner, and
  - (b) the grant is not required by the first owner or arrangements to which the first owner is a party.
- (5) Subsection (1)(g) does not prevent the first owner from—
- (a) having responsibility for any reduction in the asset's value, or
  - (b) having a share in a loss arising out of any such reduction.
- (6) Section 1124 of CTA 2010 (meaning of “control”) applies for the purposes of this section.
- (7) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from section 151J, this section and sections 151L to 151N).”

32 After section 151K insert—

#### “151L Deposit arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the depositor”) deposits money with a financial institution,
  - (b) the money, together with money deposited with the institution by other persons, is used by it with a view to producing a profit,
  - (c) from time to time the institution makes or credits a payment to the depositor out of profit resulting from the use of the money,
  - (d) the payment is in proportion to the amount deposited by the depositor, and
  - (e) the payments so made or credited by the institution equate, in substance, to the return on an investment of money at interest.
- (2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J, 151K, this section and sections 151M and 151N).”

33 After section 151L insert—

#### “151M Profit share agency arrangements

- (1) This section applies to arrangements if under them—
- (a) a person (“the principal”) appoints an agent,
  - (b) one or both of the principal and agent is a financial institution,
  - (c) the agent uses money provided by the principal with a view to producing a profit,
  - (d) the principal is entitled, to a specified extent, to profits resulting from the use of the money,
  - (e) the agent is entitled to any additional profits resulting from its use (and may also be entitled to a fee paid by the principal), and

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- (f) payments made because of the principal's entitlement to profits equate, in substance, to the return on an investment of money at interest.

- (2) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151L, this section and section 151N)."

34 After section 151M insert—

**“151N Investment bond arrangements**

- (1) This section applies to arrangements if—
  - (a) they provide for one person (“the bond-holder”) to pay a sum of money (“the capital”) to another (“the bond-issuer”),
  - (b) they identify assets, or a class of assets, which the bond-issuer will acquire for the purpose of generating income or gains directly or indirectly (“the bond assets”),
  - (c) they specify a period at the end of which they cease to have effect (“the bond term”),
  - (d) the bond-issuer undertakes under the arrangements—
    - (i) to dispose at the end of the bond term of any bond assets which are still in the bond-issuer's possession,
    - (ii) to make a repayment of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond-term (whether or not in instalments), and
    - (iii) to pay to the bond-holder other payments on one or more occasions during or at the end of the bond term (“additional payments”),
  - (e) the amount of the additional payments does not exceed an amount which would be a reasonable commercial return on a loan of the capital,
  - (f) under the arrangements the bond-issuer undertakes to arrange for the management of the bond assets with a view to generating income sufficient to pay the redemption payment and additional payments,
  - (g) the bond-holder is able to transfer the rights under the arrangements to another person (who becomes the bond-holder because of the transfer),
  - (h) the arrangements are a listed security on a recognised stock exchange, and
  - (i) the arrangements are wholly or partly treated in accordance with international accounting standards as a financial liability of the bond-issuer, or would be if the bond-issuer applied those standards.
- (2) For the purposes of subsection (1)—
  - (a) the bond-issuer may acquire bond assets before or after the arrangements take effect,
  - (b) the bond assets may be property of any kind, including rights in relation to property owned by someone other than the bond-issuer,
  - (c) the identification of the bond assets mentioned in subsection (1)(b) and the undertakings mentioned in subsection (1)(d) and (f) may (but

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need not) be described as, or accompanied by a document described as, a declaration of trust,

- (d) a reference to the management of assets includes a reference to disposal,
- (e) the bond-holder may (but need not) be entitled under the arrangements to terminate them, or participate in terminating them, before the end of the bond term,
- (f) the amount of the additional payments may be—
  - (i) fixed at the beginning of the bond term,
  - (ii) determined wholly or partly by reference to the value of or income generated by the bond assets, or
  - (iii) determined in some other way,
- (g) if the amount of the additional payments is not fixed at the beginning of the bond term, the reference in subsection (1)(e) to the amount of the additional payments is a reference to the maximum amount of the additional payments,
- (h) the amount of the redemption payment may (but need not) be subject to reduction in the event of a fall in the value of the bond assets or in the rate of income generated by them, and
- (i) entitlement to the redemption payment may (but need not) be capable of being satisfied (whether or not at the option of the bond-issuer or the bond-holder) by the issue or transfer of shares or other securities.

(3) This section is subject to section 151O (provision not at arm's length: exclusion of arrangements from sections 151J to 151M and this section).”

35 After section 151N insert—

**“151O Provision not at arm's length: exclusion of arrangements from sections 151J to 151N**

- (1) Arrangements to which this section applies are not—
  - (a) purchase and resale arrangements,
  - (b) diminishing shared ownership arrangements,
  - (c) deposit arrangements,
  - (d) profit share agency arrangements, or
  - (e) investment bond arrangements.
- (2) This section applies to arrangements if—
  - (a) apart from this section they would be alternative finance arrangements,
  - (b) subsection (3) or (5) of section 147 of TIOPA 2010 (tax calculations to be based on arm's length, not actual, provision) requires the profits and losses of a person who is a party to the arrangements to be calculated for tax purposes as if the arm's length provision (within the meaning of that section) had been made or imposed rather than in accordance with the arrangements,
  - (c) any person who is an affected person for the purposes of Part 4 of that Act (“the affected person”) is entitled to—
    - (i) relevant return in relation to the arrangements, or

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- (ii) an amount representing relevant return in relation to them,  
and
- (d) the affected person is not subject—
  - (i) to income tax or corporation tax, or
  - (ii) to any corresponding tax under the law of a territory outside the United Kingdom,
 on the relevant return or the amount representing it.

- (3) In this section “relevant return”, in relation to arrangements, means any amount which would be alternative finance return if the arrangements were alternative finance arrangements.”

36 After section 151O insert—

*“Meaning of “alternative finance return”*

#### **151P Purchase and resale arrangements**

- (1) In the case of purchase and resale arrangements, so much of the second purchase price as is specified under the following provisions of this section is alternative finance return for the purposes of this Chapter.
- (2) If under the arrangements the whole of the second purchase price is paid on one day, the alternative finance return equals the amount by which the second purchase price exceeds the first purchase price.
- (3) If under the arrangements the second purchase price is paid by instalments, the alternative finance return in each instalment equals the appropriate amount.
- (4) The appropriate amount is an amount equal to the interest which would have been included in the instalment on the assumptions in subsection (5).
- (5) The assumptions are that—
  - (a) interest is payable on a loan by the first purchaser to the second purchaser of an amount equal to the first purchase price,
  - (b) the total interest payable on the loan is equal to the amount by which the second purchase price exceeds the first purchase price,
  - (c) the instalment is a part repayment of the principal of the loan with interest, and
  - (d) the loan is made on arm's length terms and accounted for under generally accepted accounting practice.
- (6) In this section expressions used in section 151J have the same meaning as in that section.”

37 After section 151P insert—

#### **“151Q Purchase and resale arrangements where return in foreign currency**

- (1) If, in the case of purchase and resale arrangements, alternative finance return is paid in a currency other than sterling—
  - (a) by or to a person other than a company, and

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(b) otherwise than for the purposes of a trade, profession or vocation or a property business,

subsections (2) and (3) apply as respects that person.

(2) The amount of the excess referred to in section 151P(2) and (5)(b) and the appropriate amount for the purposes of section 151P(3) and (4) are to be calculated in that other currency.

(3) The amount of each payment of alternative finance return is to be translated into sterling at a spot rate of exchange for the day on which the payment is made.”

38 After section 151Q insert—

**“151R Diminishing shared ownership arrangements**

(1) In the case of diminishing shared ownership arrangements, payments by the eventual owner under the arrangements are alternative finance return for the purposes of this Chapter, except so far as subsection (2) or (3) applies to them.

(2) This subsection applies to the payments so far as they amount to payments of the kind described in section 151K(1)(c) (payments to be made by the eventual owner to the institution, amounting to the consideration paid for the acquisition of the institution's beneficial interest).

(3) This subsection applies to the payments so far as they amount to payments in respect of any arrangement fee or legal or other expenses which the eventual owner is required under the arrangements to pay.

(4) In this section “the eventual owner” has the same meaning as in section 151K.”

39 After section 151R insert—

**“151S Other arrangements**

(1) In the case of deposit arrangements, amounts paid or credited as mentioned in section 151L(1)(c) by a financial institution under the arrangements (payments to depositor out of profits resulting from use of money) are alternative finance return for the purposes of this Chapter.

(2) In the case of profit share agency arrangements, amounts paid or credited by a financial institution in accordance with such an entitlement as is mentioned in section 151M(1)(d) (principal's entitlement to profits under the arrangements) are alternative finance return for the purposes of this Chapter.

(3) In the case of investment bond arrangements, the additional payments under the arrangements are alternative finance return for the purposes of this Chapter.

(4) In this section “additional payments” has the same meaning as in section 151N (see subsection (1)(d)(iii) of that section).”

40 After section 151S insert—

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*“Special rules for investment bond arrangements*

**151T Investment bond arrangements are qualifying corporate bonds**

- (1) For the purposes of section 117, investment bond arrangements are a corporate bond, issued on the date on which the arrangements are entered into, if each of conditions A to D is met.
- (2) Condition A is that the capital is expressed in sterling.
- (3) Condition B is that the arrangements do not include provision for the redemption payment to be in a currency other than sterling.
- (4) Condition C is that entitlement to the redemption payment is not capable of conversion (directly or indirectly) into an entitlement to the issue of securities apart from other arrangements to which section 151N applies.
- (5) Condition D is that the additional payments are not determined wholly or partly by reference to the value of the bond assets.
- (6) Section 117(2) applies for the purposes of this section as it applies for the purposes of section 117(1).”

41 After section 151T insert—

**“151U Treatment of bond-holder and bond-issuer**

- (1) This section applies for the purposes of this Act and any other enactment about capital gains tax and irrespective of the position for other purposes.
- (2) The bond-holder under investment bond arrangements is not treated as having a legal or beneficial interest in the bond assets.
- (3) The bond-issuer under such arrangements is not treated as a trustee of the bond assets.
- (4) Gains accruing to the bond-issuer in connection with the bond assets are gains of the bond-issuer and not of the bond-holder (and do not arise to the bond-issuer in a fiduciary or representative capacity).
- (5) Payments made by the bond-issuer by way of redemption payment or additional payment are not made in a fiduciary or representative capacity.
- (6) The bond-holder is not entitled to relief for capital expenditure in connection with the bond assets.
- (7) Expressions used in this section have the same meaning as in section 151N.”

42 After section 151U insert—

**“151V Treatment as securities**

- (1) Investment bond arrangements are securities for the purposes of this Act and any other enactment about capital gains tax.
- (2) For those purposes—



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- (a) a reference in an enactment to redemption is to be taken as a reference to making the redemption payment, and
- (b) a reference in an enactment to interest is to be taken as a reference to alternative finance return.

(3) In subsection (2) “the redemption payment” has the same meaning as in section 151N (see subsection (1)(d)(ii) of that section).”

43 After section 151V insert—

**“151W Investment bond arrangements not unit trust scheme or offshore fund**

Investment bond arrangements are not—

- (a) a unit trust scheme for the purposes of this Act, or
- (b) an offshore fund for the purposes of section 354 of TIOPA 2010 so far as relating to capital gains tax.”

44 After section 151W insert—

*“Other rules*

**151X Exclusion of some alternative finance return from sale consideration**

- (1) If under purchase and resale arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151J).
- (2) If under diminishing shared ownership arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151K).
- (3) If under investment bond arrangements an asset is sold by one party to the arrangements to the other party, the alternative finance return is excluded in determining the consideration for the sale and purchase of the asset for the purposes of this Act so far as it applies for capital gains tax (apart from section 151N).
- (4) Subsections (1) to (3) do not affect the operation of any provision of this Act or the Tax Acts that provides that the consideration for a sale or purchase is taken for any purpose to be an amount other than the actual consideration.”

45 After section 151X insert—

**“151Y Diminishing shared ownership arrangements not partnerships**

Diminishing shared ownership arrangements are not treated as a partnership for capital gains tax purposes.”

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## PART 3

### OTHER AMENDMENTS

#### *Income and Corporation Taxes Act 1988 (c. 1)*

46 ICTA is amended as follows.

47 After section 367 insert—

#### “367A Alternative finance arrangements

- (1) Sections 353 and 365 have effect as if—
  - (a) purchase and resale arrangements involved the making of a loan, and
  - (b) alternative finance return were interest.
- (2) Section 366 has effect accordingly.
- (3) In this section—
 

“alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007, and

“purchase and resale arrangements” means arrangements to which section 564C of ITA 2007 applies.”

#### *Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

48 ITEPA 2003 is amended as follows.

49 After section 173 (loans to which Chapter 7 of Part 3 (taxable benefits: loans) applies) insert—

#### “173A Alternative finance arrangements

- (1) For the purposes of this Chapter a reference to a loan includes a reference to arrangements—
  - (a) to which section 564C of ITA 2007 or section 503 of CTA 2009 (purchase and resale arrangements) applies (or would apply assuming one of the parties were a financial institution), or
  - (b) to which section 564D of ITA 2007 or section 504 of CTA 2009 (diminishing shared ownership arrangements) applies (or would apply on that assumption).
- (2) In the application of this Chapter as a result of this section, a reference to interest is to be treated as including alternative finance return (or anything that would be such return on that assumption).
- (3) In the application of this Chapter as a result of this section, a reference to the amount outstanding is to be taken—
  - (a) in the case of arrangements within subsection (1)(a), as a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return (or anything that would be such return on that assumption),
  - (b) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 applies, as a reference to the amount of

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the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return, and

- (c) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 would apply assuming one of the parties were a financial institution, as a reference to the amount of that party's original beneficial interest minus such part of the aggregate payments made as does not represent anything that would be alternative finance return on that assumption.

- (4) In this section—

“alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007 or sections 511 to 513 of CTA 2009, and  
“financial institution” has the meaning given in section 564B of ITA 2007 or section 502 of CTA 2009.

- (5) This section does not apply to arrangements entered into before 22 March 2006.”

*Income Tax Act 2007 (c. 3)*

50 ITA 2007 is amended as follows.

51 At the beginning of Chapter 7 of Part 7 (Community Investment Tax Relief: supplementary and general) insert—

*“Alternative finance arrangements*

**Meaning of “loan” and “interest”**

372A(1) In this Part and regulations made under Chapter 2 of this Part—

- (a) references to a “loan” include references to alternative finance arrangements, and  
(b) references to “interest” include references to alternative finance return.

- (2) In subsection (1)—

“alternative finance arrangements” means arrangements to which any of the following applies—

- (a) section 564C (purchase and resale arrangements),  
(b) section 564E (deposit arrangements), and  
(c) section 564F (profit share agency arrangements), and

“alternative finance return” has the meaning given by section 564I and 564L(1) and (2).

- (3) Subsection (1) needs to be read with—

- (a) section 372B, in the case of arrangements to which section 564C applies,  
(b) section 372C, in the case of arrangements to which section 564E applies, and  
(c) section 372D, in the case of arrangements to which section 564F applies.”

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52 After section 372A insert—

**“372B Purchase and resale arrangements**

- (1) This section applies if, under arrangements to which section 564C applies, a person (“the first purchaser”) purchases an asset that is sold to another person (“the second purchaser”).
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The first purchaser is treated as making a loan to the second purchaser.
- (4) The amount of the loan is treated as being equal to the first purchase price.
- (5) If the arrangements provide that the first purchaser will transfer ownership of the asset to the second purchaser in instalments—
  - (a) references to the loan being drawn down over a period of time include references to the asset being transferred to the second purchaser in instalments,
  - (b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is transferred to the second purchaser, and
  - (c) references to the amount drawn down at a given date include references to the value of the instalments transferred at that date.
- (6) In calculating the amount of capital outstanding on the loan, each payment of the second purchase price (or part of the second purchase price), as reduced by any amount of alternative finance return included within each payment, is treated as repayment of the loan capital.
- (7) References to the beneficial owner of the loan include references to the person beneficially entitled to payment of the second purchase price.
- (8) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive payment of the whole or any part of the outstanding second purchase price.
- (9) If arrangements to which section 564C applies are, as a result of this section, qualifying investments under Chapter 3 of this Part, paragraph (f) of section 366(1) is to be ignored in relation to the arrangements concerned.
- (10) In this section “the first purchase price” and “the second purchase price” have the same meaning as in section 564C.”

53 After section 372B insert—

**“372C Deposit arrangements**

- (1) This section applies if, under arrangements to which section 564E applies, a person (“the depositor”) deposits money with a financial institution.
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The depositor is treated as making a loan to the financial institution.

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- (4) The amount of the loan is treated as being equal to the money deposited under the arrangements.
- (5) If the arrangements provide that the depositor will deposit a sum of money with the financial institution in instalments—
  - (a) references to the loan being drawn down over a period of time include references to the depositor depositing a sum of money with the financial institution in instalments,
  - (b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is deposited with the financial institution, and
  - (c) references to the amount drawn down at a given date include references to the value of the instalments deposited with the financial institution at that date.
- (6) The capital outstanding on the loan is treated as being equal to the balance of the repayable deposit.
- (7) References to any repayment of the loan include references to any repayment of the deposit.
- (8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the deposit.
- (9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the deposit.
- (10) In this section “financial institution” has the same meaning as in Part 10A (see section 564B).”

54 After section 372C insert—

**“372D Profit share agency arrangements**

- (1) This section applies if, under arrangements to which section 564F applies, a person (“the principal”) appoints a financial institution as agent.
- (2) This Part and regulations made under Chapter 2 of this Part have effect in relation to the arrangements in accordance with subsections (3) to (9).
- (3) The principal is treated as making a loan to the agent.
- (4) The amount of the loan is treated as being equal to the money provided by the principal to the agent under the arrangements.
- (5) If the arrangements provide that the principal will provide a sum of money to the agent in instalments—
  - (a) references to the loan being drawn down over a period of time include references to the principal providing a sum of money to the agent in instalments,
  - (b) references to the date on which the first amount of the loan is drawn down include references to the date on which the first instalment is provided to the agent, and

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- (c) references to the amount drawn down at a given date include references to the value of the instalments provided to the agent at that date.
  - (6) The capital outstanding on the loan is treated as being equal to the balance of the repayable money provided to the agent.
  - (7) References to any repayment of the loan include references to any repayment of the money provided to the agent.
  - (8) References to the beneficial owner of the loan include references to the person beneficially entitled to repayment of the money provided to the agent.
  - (9) References to the disposal of the whole or any part of the loan include references to the disposal of the right to receive repayment of the whole or any part of the money provided to the agent.
  - (10) In subsection (1) “financial institution” has the same meaning as in Part 10A (see section 564B).”
- 55 In section 1005 (meaning of “recognised stock exchange” etc) after subsection (2) insert—
- “(2A) An order under subsection (1) may designate a stock exchange for the purposes of this section in its application to section 564G of this Act, section 151N of TCGA 1992 and section 507 of CTA 2009 only.”

## SCHEDULE 3

Section 367

### LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

#### PART 1

##### NEW PART 11A OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 After Part 11 insert—

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## “PART 11A

### LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

#### CHAPTER 1

##### INTRODUCTION

###### *Introduction*

#### **Overview of Part**

- 614A(1) This Part makes provision for the purposes of income tax about the taxation of leasing arrangements.
- (2) Chapter 2 makes provision in relation to certain arrangements involving the lease of assets where the conditions in section 614BC are or have been met, so far as the lease is not regarded as a long-funding lease for the purposes of Part 2 of CAA 2001 in accordance with Chapter 6A of that Part (see sections 614BB to 614BE).
  - (3) Chapter 3 makes provision in relation to arrangements involving the lease of assets that are not within Chapter 2, so far as the lease is not so regarded (see sections 614C and 614CB).
  - (4) The remaining provisions of this Chapter explain some expressions about rent for the purposes of this Part.
  - (5) Chapter 4 contains further provisions supplementing this Part, including more about its interpretation.

###### *Meaning of expressions about rent*

#### **Normal rent**

- 614A(1) For the purposes of this Part, the “normal rent” in respect of a lease for a period of account of the lessor (“L”) is the amount specified in subsection (2).
- (2) That amount is the amount that L would, apart from this Part, bring into account as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to income tax for the related tax year or years.
  - (3) For the meaning of “related tax year”, see section 614DB(4).

#### **Accountancy rental earnings**

- 614A(1) For the purposes of this Part, the “accountancy rental earnings” in respect of a lease for a period of account of the lessor (“L”) is the greatest of the amounts specified in subsection (2).

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- (2) Those amounts are—
- (a) the rental earnings for that period in respect of the lease in L's case,
  - (b) the rental earnings for that period in respect of the lease in the case of a person connected with L, and
  - (c) the rental earnings for that period in respect of the lease for the purposes of consolidated group accounts of a group of companies of which L is a member.
- (3) For the meaning of “the rental earnings”, see section 614AC.

### **Rental earnings**

- 614A(1) In this Part “the rental earnings” for any period in respect of a lease of an asset in the case of any person or any consolidated group accounts is the amount specified in subsection (2).
- (2) That amount is the amount that falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the gross return for that period on investment in respect of a finance lease or loan in respect of the leasing arrangements.
- (3) For the meaning of “for accounting purposes”, see section 614DG.”

3 After section 614AC insert—

## **“CHAPTER 2**

### FINANCE LEASES WITH RETURN IN CAPITAL FORM

#### *Introduction*

### **614B Arrangements to which this Chapter applies**

- (1) This Chapter applies to arrangements involving the lease of an asset that meet conditions A and B.
- (2) Condition A is that in accordance with generally accepted accounting practice the arrangements fall to be treated as a finance lease or loan.
- (3) Condition B is that the effect of the arrangements is that some or all of the return on investment in respect of the finance lease or loan—
  - (a) is or may be in the form of a sum that is not rent, and
  - (b) would not, apart from this Part and Part 21 of CTA 2010, be wholly brought into account for tax purposes as rent from the lease of the asset.
- (4) It does not matter—
  - (a) when the arrangements are or have been entered into, or
  - (b) whether they are or have been entered into by companies or other persons.



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### **614BA Purposes of this Chapter**

- (1) This section sets out the main purposes of this Chapter where there are any arrangements to which this Chapter applies.
- (2) The first main purpose is to charge any person entitled to the lessor's interest under the lease of the asset to income tax on amounts of income determined as mentioned in subsections (3) and (4).
- (3) The amounts referred to in subsection (2) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.
- (4) The amounts referred to in subsection (2) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—
  - (a) as between connected persons, or
  - (b) within a group of companies,as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.
- (5) The second main purpose of this Chapter is, if the sum mentioned in section 614B(3)(a) that is not rent falls due, to recover by reference to that sum the whole or any part of the capital expenditure reliefs.
- (6) In subsection (5) “the capital expenditure reliefs” means any reliefs, allowances or deductions that are or have been allowed or made in respect of capital expenditure incurred in respect of the leased asset.

*Leases to which this Chapter applies*

### **614BB Application of this Chapter**

- (1) This Chapter applies if—
  - (a) a lease of an asset is or has been granted, and
  - (b) the conditions in section 614BC are or have been met in relation to the lease at some time in a period of account of the current lessor.
- (2) But this Chapter does not apply so far as, in relation to the current lessor, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).
- (3) If the conditions in section 614BC have been met at some time in a period of account of the person who was at that time the lessor, they are taken to continue to be met for the purposes of this Chapter unless and until one of the conditions in subsection (4) is met.
- (4) The conditions are that—
  - (a) the asset ceases to be leased under the lease, or

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- (b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (5).
- (5) Those persons are—
  - (a) the assignor,
  - (b) any person who was the lessor at some time before the assignment, and
  - (c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.
- (6) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income, the reference in subsection (3) to the conditions in section 614BC having been met at that time includes a reference to the conditions in section 902 of CTA 2010 having been so met.
- (7) Nothing in subsection (3) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

#### **614BC The conditions referred to in section 614BB(1)**

- (1) This section sets out the conditions required by section 614BB(1) to be met for this Chapter to apply (conditions A to E).
- (2) Condition A is that at the relevant time—
  - (a) the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or a loan, and
  - (b) subsection (3) or (4) applies.
- (3) This subsection applies if the lessor (“L”), or a person connected with L, falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the finance lessor in relation to the finance lease or loan.
- (4) This subsection applies if the finance lease or loan falls for accounting purposes to be treated, in accordance with generally accepted accounting practice, as subsisting for the purposes of consolidated group accounts of a group of companies of which L is a member.
- (5) Condition B is that, under the leasing arrangements, there is or may be payable to L, or to a person connected with L, a sum (a “major lump sum”) that is not rent but falls for accounting purposes to be treated, in accordance with generally accepted accounting practice—
  - (a) as to part, as repayment of some or all of the investment in respect of a finance lease or loan, and
  - (b) as to part, as a return on investment in respect of a finance lease or loan.
- (6) Condition C is that not all of that part of the sum that falls within subsection (5)(b) would, apart from this Chapter, fall to be brought into

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account for income tax purposes in tax years ending with the relevant tax year as the normal rent from the lease for periods of account of L.

- (7) Condition D is that, in relation to L at the relevant time—
- (a) the period of account of L in which the relevant time falls, or
  - (b) an earlier period of account of L during which L was the lessor,
- is a period of account for which the accountancy rental earnings in respect of the lease exceed the normal rent for the period.
- (8) Condition E is that at the relevant time—
- (a) arrangements within section 614BE(1) exist, or
  - (b) paragraph (a) does not apply and circumstances within section 614BE(3) exist.
- (9) Section 614BD supplements this section.

#### **614BD Provisions supplementing section 614BC**

- (1) In section 614BC—
- “the relevant tax year”, in relation to a major lump sum, means—
- (a) the tax year which is related to the period of account of the lessor (“L”) in which the major lump sum is or may be payable in accordance with the leasing arrangements, or
  - (b) if there are two or more such tax years, the latest of them, and
- “the relevant time” means the time as at which it must be determined for the purposes of section 614BB(1) or (3) whether the conditions in section 614BC are or, as the case may be, were met.
- (2) For the meaning of a tax year being related to a period of account, see section 614DB(4).
- (3) Subsection (4) applies for determining the normal rent for a period of account for the purpose of determining whether condition D in section 614BC is met as respects L unless subsection (5) applies.
- (4) Rent that falls to be brought into account for income tax purposes as it falls due is treated—
- (a) as accruing evenly throughout the period to which, in accordance with the terms of the lease, each payment falling due relates, and
  - (b) as falling due as it so accrues.
- (5) This subsection applies if any such payment as is mentioned in subsection (4)
- (a) falls due more than 12 months after the time at which any of the rent to which that payment relates is treated as accruing under subsection (4)(a).

#### **614BE The arrangements and circumstances referred to in section 614BC(8)**

- (1) The arrangements referred to in section 614BC(8)(a) are arrangements under which—
- (a) the lessee or a person connected with the lessee may acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and

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- (b) in connection with that acquisition, the lessor or a person connected with the lessor may receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.
- (2) In this section “qualifying lump sum” means any sum that is not rent but at least part of which would fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a return on investment in respect of a finance lease or loan.
  - (3) The circumstances referred to in section 614BC(8)(b) are circumstances which make it more likely—
    - (a) that the events described in subsection (4) will occur, than
    - (b) that the event described in subsection (5) will occur.
  - (4) The events mentioned in subsection (3)(a) are—
    - (a) that the lessee or a person connected with the lessee will acquire, whether directly or indirectly, the leased asset or an asset representing the leased asset from the lessor or a person connected with the lessor, and
    - (b) that, in connection with that acquisition, the lessor or a person connected with the lessor will receive, whether directly or indirectly, a qualifying lump sum from the lessee or a person connected with the lessee.
  - (5) The event mentioned in subsection (3)(b) is that, before any such acquisition as is mentioned in subsection (4) takes place, the leased asset or, as the case may be, the asset representing the leased asset, will have been acquired, in a sale on the open market, by an independent third party.
  - (6) In subsection (5) “independent third party” means a person who—
    - (a) is not the lessor or the lessee, and
    - (b) is not connected with either of them.
  - (7) For the meaning of an asset representing the leased asset, see section 614DD.

*Current lessor taxed by reference to accountancy rental earnings*

#### **614BF Current lessor taxed by reference to accountancy rental earnings**

- (1) This section applies if, in the case of any period of account of the current lessor (“L”)—
  - (a) this Chapter applies in relation to the lease, and
  - (b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.
- (2) For income tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).
- (3) Such rent from the lease of an asset is treated for income tax purposes—

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- (a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and
- (b) as if L had become entitled to it as it accrued.

#### *Reduction of taxable rent by cumulative rental excesses*

### **614BG Reduction of taxable rent by cumulative rental excesses: introduction**

- (1) This section and sections 614BH to 614BK provide for reductions of the taxable rent of a current lessor (“L”) under a lease to which this Chapter applies.
- (2) In this section and sections 614BH to 614BK “taxable rent”, in relation to a period of account of L, means the amount that would, apart from those sections, be treated for income tax purposes as rent from the lease that arises to L in that period of account for the purpose of determining L's liability to tax for the related tax year or years.
- (3) The reductions of taxable rent under sections 614BH to 614BK depend on there being—
  - (a) a cumulative accountancy rental excess for the period of account of L in question, or
  - (b) a cumulative normal rental excess for the period of account of L in question.
- (4) For the meaning of “cumulative accountancy rental excess” and “cumulative normal rental excess”, see sections 614BH and 614BJ respectively.

### **614BH Meaning of “accountancy rental excess” and “cumulative accountancy rental excess”**

- (1) For the purposes of this Chapter, there is an “accountancy rental excess” in relation to the lease for a period of account of the current lessor (“L”) if the taxable rent in relation to the lease for the period is as a result of section 614BF (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings.
- (2) The amount of the accountancy rental excess for the period is equal to the difference between the accountancy rental earnings for the period and the normal rent for the period.
- (3) But if the taxable rent for the period is reduced under section 614BK (reduction of taxable rent by the cumulative normal rental excess), there is only an accountancy rental excess for the period if—
  - (a) the accountancy rental earnings, reduced by an amount equal to the reduction under that section, exceed
  - (b) the normal rent.
- (4) And in that case the amount of the accountancy rental excess for the period is equal to that excess.
- (5) In this Chapter the “cumulative accountancy rental excess”, in relation to the lease and a period of account of L, means so much of the total of the accountancy rental excesses for previous periods of account of L (as

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increased under section 614BM: recovery of bad debts following reduction under section 614BL) as has not been—

- (a) set off under section 614BI (reduction of taxable rent by the cumulative accountancy rental excess) against the taxable rent for any such previous period,
- (b) reduced under section 614BL (relief for bad debts: reduction of cumulative accountancy rental excess), or
- (c) set off under section 37A of TCGA 1992 (consideration on disposal of certain leases) against the consideration for a disposal.

#### **614BI Reduction of taxable rent by the cumulative accountancy rental excess**

- (1) This section applies if a period of account of the current lessor (“L”) is one for which—
  - (a) the normal rent in relation to the lease exceeds the accountancy rental earnings, and
  - (b) there is a cumulative accountancy rental excess.
- (2) The taxable rent for the period of account is reduced by setting against it the cumulative accountancy rental excess (but not so as to reduce that rent below the amount of the accountancy rental earnings).
- (3) But see section 614BL(3) and (4) (under which the amount of the cumulative accountancy rental excess which may be set against the taxable rent is limited in some circumstances).

#### **614BJ Meaning of “normal rental excess” and “cumulative normal rental excess”**

- (1) For the purposes of this Chapter, there is a “normal rental excess” in relation to a lease for any period of account of the current lessor (“L”) throughout which the leasing arrangements fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan if—
  - (a) the normal rent for the period, exceeds
  - (b) the accountancy rental earnings for the period.
- (2) The amount of the normal rental excess for that period is equal to that excess.
- (3) But if the taxable rent for the period is reduced under section 614BI (reduction of taxable rent by the cumulative accountancy rental excess), there is only a normal rental excess for the period if—
  - (a) the normal rent, reduced by an amount equal to the reduction under that section, exceeds
  - (b) the accountancy rental earnings.
- (4) And in that case the amount of the normal rental excess for the period is equal to that excess.
- (5) In this Chapter “cumulative normal rental excess”, in relation to the lease and a period of account of L, means so much of the total of the normal rental excesses for previous periods of account of L (as increased

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under section 614BO: recovery of bad debts following reduction under section 614BN) as has not been—

- (a) set off under section 614BK (reduction of taxable rent by the cumulative normal rental excess) against the taxable rent for any such previous period, or
- (b) reduced under section 614BN (relief for bad debts: reduction of cumulative normal rental excess).

### **614BK Reduction of taxable rent by the cumulative normal rental excess**

- (1) This section applies if a period of account of the current lessor (“L”) is one for which—
  - (a) the taxable rent in relation to the lease is as a result of section 614BF (current lessor taxed by reference to accountancy rental earnings) an amount equal to the accountancy rental earnings, and
  - (b) there is a cumulative normal rental excess.
- (2) The taxable rent for the period of account is reduced by setting against it the cumulative normal rental excess (but not so as to reduce that rent below the amount of the normal rent).
- (3) But see section 614BN(3) and (4) (under which the amount of the cumulative normal rental excess which may be set against the taxable rent is limited in some circumstances).

*Relief for bad debts by reduction of cumulative rental excesses*

### **614BL Relief for bad debts: reduction of cumulative accountancy rental excess**

- (1) This section applies if in relation to the lease for any period of account of the current lessor—
  - (a) there is a cumulative accountancy rental excess, and
  - (b) a bad debt deduction falls to be made in respect of rent from the lease.
- (2) If for that period—
  - (a) the accountancy rental earnings in relation to the lease exceed the normal rent, and
  - (b) the amount of the bad debt deduction exceeds the amount of the accountancy rental earnings,the cumulative accountancy rental excess for that period is reduced by the amount of the excess of that deduction over those earnings (but not so as to reduce the amount of that rental excess below nil).
- (3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease do not exceed the normal rent.
- (4) The amount of the cumulative accountancy rental excess that may be set against the taxable rent for that period under section 614BI(2) (reduction of taxable rent by the cumulative accountancy rental excess) is limited to the amount (if any) by which the normal rent exceeds the bad debt deduction.

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- (5) If for that period the bad debt deduction exceeds the normal rent, the cumulative accountancy rental excess for that period is reduced by the amount of that excess (but not so as to reduce the amount of that rental excess below nil).
- (6) In this section—
- “bad debt deduction”, in relation to a period of account of the lessor, means the total of any sums falling within section 35(1)(a), (b) or (c) of ITTOIA 2005 in respect of amounts in respect of rents from the lease of the asset which are deductible as expenses for that period, and
- “taxable rent” has the meaning given in section 614BG(2).

#### **614BM Recovery of bad debts following reduction under section 614BL**

- (1) This section applies if in relation to the lease—
- (a) the cumulative accountancy rental excess for any period of account of the current lessor (“L”) has been reduced under section 614BL(2) or (5) because of a bad debt deduction,
  - (b) in a subsequent period of account of L, an amount (“the relevant credit”) is recovered or credited in respect of the amount which constituted the bad debt deduction, and
  - (c) there is a cumulative accountancy rental excess for that subsequent period.
- (2) The cumulative accountancy rental excess for the subsequent period is increased.
- (3) If the relevant credit does not exceed the total of the reductions under section 614BL(2) or (5), the increase is by the relevant credit.
- (4) Otherwise, the increase is limited to that total.
- (5) In this section “bad debt deduction” has the meaning given in section 614BL(6).

#### **614BN Relief for bad debts: reduction of cumulative normal rental excess**

- (1) This section applies if in relation to the lease for any period of account of the current lessor—
- (a) there is a cumulative normal rental excess, and
  - (b) a bad debt deduction falls to be made in respect of rent from the lease.
- (2) If for that period—
- (a) the accountancy rental earnings in the case of the lease do not exceed the normal rent, and
  - (b) the amount of the bad debt deduction exceeds the amount of that rent,
- the cumulative normal rental excess for that period is reduced by the amount of the excess of that deduction over that rent (but not so as to reduce the amount of that rental excess below nil).



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- (3) Subsections (4) and (5) apply if for that period the accountancy rental earnings in relation to the lease exceed the normal rent.
- (4) The amount of the cumulative normal rental excess that may be set against the taxable rent for that period under section 614BK (reduction of taxable rent by the cumulative normal rental excess) is limited to the amount (if any) by which the accountancy rental earnings exceed the bad debt deduction.
- (5) If for that period the bad debt deduction exceeds the accountancy rental earnings, the cumulative normal rental excess for that period is reduced by the amount of the excess (but not so as to reduce the amount of that rental excess below nil).
- (6) In this section, in relation to a period of account of the lessor—
  - “bad debt deduction” has the meaning given in section 614BL(6),
  - and
  - “taxable rent” has the meaning given in section 614BG(2).

#### **614BO Recovery of bad debts following reduction under section 614BN**

- (1) This section applies if in relation to the lease—
  - (a) the cumulative normal rental excess for any period of account of the current lessor (“L”) has been reduced under section 614BN(2) or (5) as a result of a bad debt deduction,
  - (b) in a subsequent period of account of L, an amount (“the relevant credit”) is recovered or credited in respect of the amount which constituted the bad debt deduction, and
  - (c) there is a cumulative normal rental excess for that subsequent period.
- (2) The cumulative normal rental excess for the subsequent period is increased.
- (3) If the relevant credit does not exceed the total of the reductions under section 614BN(2) or (5), the increase is by the relevant credit.
- (4) Otherwise, the increase is limited to that total.
- (5) In this section “bad debt deduction” has the meaning given in section 614BL(6).

#### *Effect of disposals*

#### **614BP Effect of disposals of leases: general**

- (1) This section applies if the current lessor (“L”) or a person connected with L disposes of—
  - (a) the lessor's interest under the lease,
  - (b) the leased asset, or
  - (c) an asset representing the leased asset (see section 614DD).
- (2) This Part has effect as if immediately before the disposal a period of account of L ended and another began.
- (3) If—

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- (a) two or more disposals within subsection (1) are made at the same time, and
  - (b) there is any cumulative accountancy rental excess for any period of account of L in which the disposal occurs,
- subsection (2) has effect in relation to those disposals as if they together constituted a single disposal.
- (4) In this section “dispose” and “disposal” are to be read in accordance with TCGA 1992.
- (5) In cases where there is any cumulative accountancy rental excess for L's period of account in which the disposal occurs, section 37A of that Act (consideration on disposal of certain leases) makes provision for the purposes of that Act about the reduction of the consideration for the disposal by that excess in determining if a gain has accrued.

#### **614BQ Assignments on which neither a gain nor a loss accrues**

- (1) This section applies if—
- (a) the current lessor (“L”) assigns the lessor's interest under the lease, and
  - (b) the assignment is a disposal on which, as a result of any of the no gain/no loss provisions, neither a gain nor a loss accrues.
- (2) This Part has effect as if—
- (a) a period of account of L (“L's period”) ended with the assignment, and
  - (b) a period of account of the assignee (“A's period”) began with the assignment.
- (3) Any cumulative accountancy rental excess for L's period becomes the cumulative accountancy rental excess for A's period.
- (4) Any cumulative normal rental excess for L's period becomes the cumulative normal rental excess for A's period.
- (5) If the assignee is a company subject to the charge to corporation tax on income, so far as this section relates to the assignee, it applies for the purposes of Part 21 of CTA 2010 as it would otherwise apply for the purposes of this Part.
- (6) In this section “the no gain/no loss provisions” has the same meaning as in TCGA 1992 (see section 288(3A) of that Act).

*Capital allowances: claw-back of major lump sum*

#### **614BR Effect of capital allowances: introduction**

- (1) This section and sections 614BS to 614BW apply if an occasion occurs on which a major lump sum falls to be paid in relation to the lease of the asset.
- (2) In those sections the occasion is called “the relevant occasion”.

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### **614BS Cases where expenditure taken into account under Part 2, 5 or 8 of CAA 2001**

- (1) This section applies if capital expenditure incurred by the current lessor (“L”) in respect of the leased asset is or has been taken into account for the purposes of any allowance or charge under—
  - (a) Part 2 of CAA 2001 (plant and machinery allowances),
  - (b) Part 5 of that Act (mineral extraction allowances), or
  - (c) Part 8 of that Act (patent allowances).
- (2) The Part of that Act in question (“the relevant Part”) has effect as if the relevant occasion were an event (“the relevant event”) as a result of which a disposal value is to be brought into account of an amount equal to the amount or value of the major lump sum (but subject to any applicable limiting provision).
- (3) In this section “limiting provision” means a provision to the effect that the disposal value of the asset in question is not to exceed an amount (“the limit”) described by reference to capital expenditure incurred in respect of the asset.
- (4) Subsection (5) applies if—
  - (a) as a result of subsection (2), a disposal value (“the relevant disposal value”) falls or has fallen to be brought into account by a person in respect of the leased asset for the purposes of the relevant Part, and
  - (b) a limiting provision has effect in the case of that Part.
- (5) The limiting provision has effect (so far as it would not otherwise do so), in relation to the relevant disposal value and any simultaneous or later disposal value, as if—
  - (a) it did not limit any particular disposal value, but
  - (b) it limited the total amount of all the disposal values brought into account for the purposes of the relevant Part by L in respect of the leased asset.
- (6) In subsection (5) “simultaneous or later disposal value” means any disposal value which falls to be brought into account by L in respect of the leased asset as a result of any event occurring at the same time as, or later than, the relevant event.

### **614BT Cases where expenditure taken into account under other provisions of CAA 2001**

- (1) This section applies if any allowance is or has been given in respect of capital expenditure incurred by the current lessor (“L”) in respect of the leased asset under any provision of CAA 2001 other than—
  - (a) Part 2 of CAA 2001 (plant and machinery allowances),
  - (b) Part 5 of that Act (mineral extraction allowances), or
  - (c) Part 8 of that Act (patent allowances).
- (2) The amount specified in subsection (3) is treated, in relation to L, as if it were a balancing charge to be made on L for the chargeable period in which the relevant occasion falls.

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- (3) That amount is an amount equal to—
  - (a) the total of the allowances given as mentioned in subsection (1) (so far as not previously recovered or withdrawn), or
  - (b) if it is less, the amount or value of the major lump sum.
- (4) In this section “chargeable period” has the meaning given by section 6 of CAA 2001.

#### **614BU Capital allowances deductions: waste disposal and cemeteries**

- (1) This section applies if any deduction is or has been allowed to the current lessor (“L”) in respect of capital expenditure incurred in connection with the leased asset as a result of—
  - (a) section 165 or 168 of ITTOIA 2005 (preparation and restoration expenditure in relation to waste disposal site), or
  - (b) section 170 of that Act (cemeteries and crematoria: deduction for capital expenditure).
- (2) L is treated as if trading receipts arose to L from the trade in question on the relevant occasion.
- (3) The amount of those receipts is equal to the lesser of—
  - (a) the amount or value of the major lump sum, and
  - (b) the deductions previously allowed.

#### **614BV Capital allowances deductions: films and sound recordings**

- (1) This section applies if—
  - (a) any relevant deduction has been allowed to the current lessor (“L”) in respect of expenditure incurred in connection with the leased asset, and
  - (b) the amount or value of the major lump sum exceeds so much of that sum as was treated as receipts of a revenue nature under section 134(2) of ITTOIA 2005 (disposal proceeds of original master version of film or sound recording treated as receipt of a revenue nature).
- (2) In subsection (1) “relevant deduction” means any deduction as a result of—
  - (a) section 135 of ITTOIA 2005 (allocation of expenditure on master versions of films or sound recordings to periods), or
  - (b) section 138, 138A, 139 or 140 of that Act (relief for production or acquisition expenditure in respect of films).
- (3) L is treated as if receipts of a revenue nature arose to L from the trade or business in question on the relevant occasion.
- (4) The amount of those receipts is equal to the excess mentioned in subsection (1)(b).

#### **614BW Contributors to capital expenditure**

- (1) This section applies if—

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- (a) section 614BS or 614BT applies in relation to a leased asset,
  - (b) allowances are or have been made to a person (“the contributor”) as a result of sections 537 to 542 of CAA 2001 (allowances in respect of contributions to capital expenditure), and
  - (c) those allowances are or were in respect of the contributor's contribution of a capital sum to expenditure on the provision of the leased asset.
- (2) Section 614BS or, as the case may be, section 614BT has effect in relation to the contributor and those allowances as it has effect in relation to the current lessor and allowances in respect of capital expenditure incurred by the current lessor in respect of the leased asset.

*Schemes to which this Chapter does not at first apply*

**614BX Pre-26 November 1996 schemes where this Chapter does not at first apply**

- (1) This section applies if—
  - (a) the lease of an asset forms part of a pre-26 November 1996 scheme, but
  - (b) the conditions in section 614BC become met after 26 November 1996.
- (2) For the meaning of “forming part of a pre-26 November 1996 scheme”, see section 614D.
- (3) This Part has effect as if—
  - (a) a period of account (“period 1”) of the current lessor (“L”) ended immediately before the time at which those conditions become met,
  - (b) another period of account of L (“period 2”) began immediately before that time and ended immediately after that time, and
  - (c) another period of account of L began immediately after that time.
- (4) If, on the continuous application assumption (see subsection (9)), there would be an amount of cumulative accountancy rental excess for period 2, that amount is the cumulative accountancy rental excess for period 2.
- (5) If subsection (4) applies, L is treated for income tax purposes as if in period 1 L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to that cumulative accountancy rental excess.
- (6) The amount of rent mentioned in subsection (5)—
  - (a) is in addition to any other rent from the lease for period 1, and
  - (b) is left out of account for the purposes of section 614BF (current lessor taxed by reference to accountancy rental earnings).
- (7) Rent within subsection (5) is treated for income tax purposes as if it had accrued and L had become entitled to it immediately before the end of period 1.

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- (8) If, on the continuous application assumption, there would be an amount of cumulative normal rental excess for period 2, that amount is the cumulative normal rental excess for period 2.
- (9) In this section “the continuous application assumption” means the assumption that this Chapter (other than this section) had applied in the case of the lease at all times on or after 26 November 1996.
- (10) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income, the reference in subsection (9) to this Chapter (other than this section) includes a reference to Chapter 2 of Part 21 of CTA 2010 (other than section 923 of that Act).

#### **614BY Post-25 November 1996 schemes to which Chapter 3 applied first**

- (1) This section applies if—
  - (a) the conditions in section 614BC become met in the case of the lease of the asset, and
  - (b) immediately before those conditions become met, Chapter 3 applied.
- (2) Subsection (3) applies for the purpose of determining—
  - (a) the cumulative accountancy rental excess for any period of account ending after those conditions become met, or
  - (b) the cumulative normal rental excess for any such period.
- (3) This Part has effect as if this Chapter had applied in relation to the lease at any time when Chapter 3 applied in relation to it.
- (4) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income—
  - (a) the reference in subsection (1)(a) to the conditions in section 614BC becoming met at that time includes a reference to the conditions in section 902 of CTA 2010 becoming so met,
  - (b) the reference in subsection (1)(b) to Chapter 3 applying immediately before that time includes a reference to Chapter 3 of Part 21 of that Act so applying, and
  - (c) the reference in subsection (3) to Chapter 3 applying at that time includes a reference to Chapter 3 of that Part so applying.”

4 After section 614BY insert—

### **“CHAPTER 3**

#### OTHER FINANCE LEASES

##### *Introduction*

#### **614C Introduction to Chapter**

- (1) This Chapter applies to arrangements involving the lease of an asset that—

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- (a) fall to be treated, in accordance with generally accepted accounting practice, as a finance lease or loan, but
  - (b) are not arrangements to which Chapter 2 applies.
- (2) It does not matter whether the arrangements are or have been entered into by companies or other persons.

#### **614CA Purpose of this Chapter**

- (1) The main purpose of this Chapter where there are arrangements to which this Chapter applies is to charge a person entitled to the lessor's interest under the lease of the asset to income tax on amounts of income determined as mentioned in subsection (2).
- (2) The amounts referred to in subsection (1) are determined by reference to the amounts that fall for accounting purposes to be treated, in accordance with generally accepted accounting practice, as the income return on and after 26 November 1996 on investment in respect of the finance lease or loan.
- (3) The amounts referred to in subsection (1) are also determined taking into account the substance of the matter as a whole, including, in particular, the state of affairs—
  - (a) as between connected persons, or
  - (b) within a group of companies,as reflected or falling to be reflected in accounts of any of those persons or in consolidated group accounts.

*Leases to which this Chapter applies*

#### **614CB Leases to which this Chapter applies**

- (1) This Chapter applies if—
  - (a) a lease of an asset is or has been granted on or after 26 November 1996,
  - (b) the lease forms part of a post-25 November 1996 scheme,
  - (c) condition A in section 614BC is or has been met at some time on or after 26 November 1996 in relation to the lease in a period of account of the current lessor (“L”), and
  - (d) Chapter 2 does not apply in relation to the lease because of the other conditions in that section not all being, or having been, met as mentioned in section 614BB.
- (2) For the meaning of “forming part of a post-25 November 1996 scheme”, see section 614D.
- (3) This Chapter does not apply so far as, in relation to L, the lease falls to be regarded as a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances) in accordance with Chapter 6A of that Part (interpretation of provisions about long funding leases) (see section 70G of that Act).
- (4) If condition A in section 614BC has been met at any time on or after 26 November 1996 in a period of account of the person who was at that time the

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lessor, it is taken to continue to be met unless and until one of the conditions in subsection (5) is met.

- (5) The conditions are that—
- (a) the asset ceases to be leased under the lease, or
  - (b) the lessor's interest under the lease is assigned to a person who is not connected with any of the persons specified in subsection (6).
- (6) Those persons are—
- (a) the assignor,
  - (b) any person who was the lessor at some time before the assignment, and
  - (c) any person who at some time after the assignment becomes the lessor pursuant to arrangements made by a person who was the lessor, or was connected with the lessor, at some time before the assignment.
- (7) If at any time the person who was the lessor at that time was a person within the charge to corporation tax on income—
- (a) the reference in subsection (4) to condition A in section 614BC having been met at that time includes a reference to condition A in section 902 of CTA 2010 having been so met, and
  - (b) the reference in subsection (1)(d) to the other conditions in section 614BC not having been met as mentioned in section 614BB includes a reference to the other conditions in section 902 of that Act not having been met as mentioned in section 901 of that Act.
- (8) Nothing in subsection (4) prevents this Chapter from applying again in relation to the lease where the lessor's interest is assigned if the conditions for its application are met after the assignment.

*Current lessor taxed by reference to accountancy rental earnings*

#### **614CC Current lessor taxed by reference to accountancy rental earnings**

- (1) This section applies if, in the case of any period of account of the current lessor (“L”)—
- (a) this Chapter applies in relation to the lease, and
  - (b) the accountancy rental earnings in respect of the lease for that period of account exceed the normal rent for that period.
- (2) For income tax purposes, L is treated as if in that period of account L had been entitled to, and there had arisen to L, rent from the lease of an amount equal to those accountancy rental earnings (instead of the normal rent referred to in subsection (1)(b)).
- (3) Such rent from the lease of an asset is treated for income tax purposes—
- (a) as if it had accrued at an even rate throughout so much of the period of account as falls within the period for which the asset is leased, and
  - (b) as if L had become entitled to it as it accrued.



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*Application of provisions of Chapter 2 for purposes of this Chapter*

**614CD Application of provisions of Chapter 2 for purposes of this Chapter**

Sections 614BG to 614BQ apply for the purposes of this Chapter as they apply for the purposes of Chapter 2, but taking the references in sections 614BH(1) and 614BK(1)(a) to section 614BF as references to section 614CC.”

5 After section 614CD insert—

**“CHAPTER 4**

SUPPLEMENTARY PROVISIONS

**614D Pre-26 November 1996 schemes and post-25 November 1996 schemes**

- (1) For the purposes of this Part, a lease of an asset—
  - (a) forms part of a pre-26 November 1996 scheme if (and only if) the conditions in subsection (2) or (3) are met, and
  - (b) in any other case, forms part of a post-25 November 1996 scheme.
- (2) The conditions in this subsection are that—
  - (a) a contract in writing for the lease of the asset was made before 26 November 1996,
  - (b) either—
    - (i) the contract was unconditional, or
    - (ii) if the contract was conditional, the conditions were met before that date, and
  - (c) no terms remain to be agreed on or after that date.
- (3) The conditions in this subsection are that—
  - (a) a contract in writing for the lease of the asset was made before 26 November 1996,
  - (b) the condition in subsection (2)(b) or (c) was not met in the case of the contract,
  - (c) either—
    - (i) the contract was unconditional, or
    - (ii) if the contract was conditional, the conditions were met before the end of the finalisation period or within such further period as the Commissioners for Her Majesty's Revenue and Customs may allow in the particular case,
  - (d) no terms remain to be agreed after the end of the finalisation period or such further period as those Commissioners may so allow, and
  - (e) the contract in its final form was not materially different from the contract as it stood when it was made before 26 November 1996.
- (4) In subsection (3) “the finalisation period” means the period which ended with the later of—

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- (a) 31 January 1997, and
- (b) the end of the period of six months beginning with the day after that on which the contract was made as mentioned in subsection (3)(a).

#### **614DA Time apportionment where periods of account do not coincide**

- (1) Subsection (2) applies if a period of account of the lessor (“L”) does not coincide with a period of account of a person connected with L.
- (2) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the connected person is found by making such apportionments as may be necessary between two or more periods of account of the connected person.
- (3) Subsection (4) applies if a period of account of L does not coincide with a period for which consolidated group accounts of a group of companies of which L is a member fall to be prepared.
- (4) Any amount which falls for the purposes of this Part to be found for L's period of account but by reference to the consolidated group accounts is found by making such apportionments as may be necessary between two or more periods for which consolidated group accounts of the group fall to be prepared.
- (5) Any apportionment under subsection (2) or (4) must be made in proportion to the number of days in the respective periods that fall within L's period of account.

#### **614DB Periods of account and related periods of account and tax years**

- (1) In this Part “period of account” means a period for which accounts are made up.
- (2) Except for the purposes of sections 614BB to 614BE and subsection (3), in this Part “period of account” does not include a period that begins before 26 November 1996.
- (3) But this Part applies in relation to a period of account that begins before 26 November 1996 and ends on or after that date as if—
  - (a) so much of the period as falls before that date, and
  - (b) so much of the period as falls on or after that date,were separate periods of account.
- (4) For the purposes of this Part, a tax year is related to a period of account if the tax year consists of or includes the whole or any part of the period of account.
- (5) For the purposes of this Part a period of account is related to a tax year if the tax year is related to the period of account.

#### **614DC Connected persons**

- (1) For the purposes of this Part in its application as a result of any leasing arrangements, if a person (“A”) is connected with another (“B”) at some time during the relevant period A is treated as being connected with B throughout that period.

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- (2) The relevant period is the period that—
  - (a) begins at the earliest time at which any of the arrangements were made, and
  - (b) ends when the current lessor finally ceases to have an interest in the asset or any arrangements relating to it.

#### **614DD Assets which represent the leased asset**

- (1) For the purposes of this Part, the assets described in subsection (2) are treated as representing the leased asset.
- (2) Those assets are—
  - (a) any asset derived from the leased asset or created out of it,
  - (b) any asset from which the leased asset was derived or out of which the leased asset was created,
  - (c) any asset derived from or created out of an asset within paragraph (b), and
  - (d) any asset that derives the whole or a substantial part of its value from the leased asset or an asset that itself represents the leased asset.

#### **614DE Parent undertakings and consolidated group accounts**

- (1) This Part has effect in relation to a body corporate that—
  - (a) is a parent undertaking, but
  - (b) for accounting purposes is not required to prepare consolidated group accounts in accordance with generally accepted accounting practice,  
as if it were so required.
- (2) For the purposes of subsection (1) it does not matter where the body corporate is incorporated.
- (3) In subsection (1) “parent undertaking” is to be read in accordance with section 1162 of the Companies Act 2006.

#### **614DF Assessments and adjustments**

All such assessments and adjustments must be made as are necessary to give effect to this Part.

#### **614DG Interpretation**

In this Part, unless the context otherwise requires—

“accountancy rental earnings” has the meaning given by section 614AB(1),

“accountancy rental excess” is to be read—

- (a) for the purposes of Chapter 2, in accordance with section 614BH(1) to (4), and
- (b) for the purposes of Chapter 3, in accordance with section 614BH(1) to (4) as it has effect as a result of section 614CD,

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“asset” means any form of property or rights,

“asset representing the leased asset” is to be read in accordance with section 614DD,

“cumulative accountancy rental excess” is to be read—

- (a) for the purposes of Chapter 2, in accordance with section 614BH(5), and
- (b) for the purposes of Chapter 3, in accordance with section 614BH(5) as it has effect as a result of section 614CD,

“cumulative normal rental excess” is to be read—

- (a) for the purposes of Chapter 2, in accordance with section 614BJ(5), and
- (b) for the purposes of Chapter 3, in accordance with section 614BJ(5) as it has effect as a result of section 614CD,

“the current lessor”, in relation to a lease of an asset, means the person who is for the time being entitled to the lessor's interest under the lease,

“finance lessor” means a person who for accounting purposes is treated, in accordance with generally accepted accounting practice, as the person with—

- (a) the grantor's interest in relation to a finance lease, or
- (b) the lender's interest in relation to a loan,

“for accounting purposes” means for the purposes of—

- (a) accounts of companies incorporated in any part of the United Kingdom, or
- (b) consolidated group accounts for groups all the members of which are companies so incorporated,

“lease”—

- (a) in relation to land, includes an underlease, sublease, tenancy or licence, and any agreement for a lease, underlease, sublease, tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined, and
- (b) in relation to any form of property or right other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset,

and “rent” is to be read accordingly,

“the leasing arrangements”, in relation to a lease of an asset, means—

- (a) the lease,
- (b) any arrangements relating to or connected with the lease, and
- (c) any other arrangements of which the lease forms part,

and includes a reference to any of the leasing arrangements,

“the lessee”, in relation to a lease of an asset, means (except in the expression “the lessee's interest under the lease”) the person entitled to the lessee's interest under the lease,

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“the lessor”, in relation to a lease of an asset, means (except in the expression “the lessor's interest under the lease”) the person entitled to the lessor's interest under the lease,

“major lump sum” is to be read in accordance with section 614BC(5),

“normal rent” is to be read in accordance with section 614AA,

“normal rental excess” is to be read—

(a) for the purposes of Chapter 2, in accordance with section 614BJ(1) to (4), and

(b) for the purposes of Chapter 3, in accordance with section 614BJ(1) to (4) as it has effect as a result of section 614CD,

“period of account” is to be read in accordance with section 614DB(1) to (3),

“post-25 November 1996 scheme” is to be read in accordance with section 614D(1)(b),

“pre-26 November 1996 scheme” is to be read in accordance with section 614D(1)(a),

“related period of account” is to be read in accordance with section 614DB(5),

“related tax year” is to be read in accordance with section 614DB(4),

“the rental earnings”, in relation to a lease of an asset and any period, has the meaning given by section 614AC, and

“sum” includes any money or money's worth (and “pay” and related expressions are to be read accordingly).”

## PART 2

### NEW SECTION 37A OF TCGA 1992

6 TCGA 1992 is amended as follows.

7 After section 37 insert—

#### “37A Consideration on disposal of certain leases

(1) This section applies if—

(a) a disposal occurs that is within section 614BP of ITA 2007 (including that section as it has effect as a result of section 614CD of that Act), and

(b) for the purposes of Chapter 2 or 3 of Part 11A of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.

(2) This section also applies if—

(a) a disposal occurs that is within section 915 of CTA 2010 (including that section as it has effect as a result of section 929 of that Act), and

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- (b) for the purposes of Chapter 2 or 3 of Part 21 of that Act there is any cumulative accountancy rental excess in relation to the lease for the period of account of the current lessor in which the disposal takes place.
- (3) In determining for the purposes of this Act the amount of any gain accruing to the person making the disposal, the consideration for the disposal is treated as reduced by setting against it that excess (but not so as to reduce the amount of that consideration below nil).
- (4) Subsection (3) only affects section 37 so far as subsection (5) provides.
- (5) Section 37 does not exclude any money or money's worth from the consideration for a disposal so far as it is represented by any such cumulative accountancy rental excess that, in accordance with subsection (3)—
  - (a) falls to be set against the consideration for the disposal, or
  - (b) has fallen to be set against the consideration for a previous disposal made by the person making the disposal in question or a person connected with that person.
- (6) Subsections (7) to (9) apply if the disposal mentioned in subsection (1) or (2) is a part disposal of the asset in question.
- (7) The cumulative accountancy rental excess mentioned in subsection (3) must be apportioned between—
  - (a) the property disposed of, and
  - (b) the property that remains undisposed of.
- (8) That apportionment must be made in the same proportions as those in which the sums that under section 38(1)(a) or (b) are attributable to the asset fall to be apportioned under section 42.
- (9) Only so much of the cumulative accountancy rental excess as is so apportioned to the property disposed of is set against the consideration for the part disposal in accordance with subsection (3).
- (10) If subsection (3) applies in a case where two or more disposals within subsection (1) or (2) are made at the same time, the cumulative accountancy rental excess mentioned in subsection (3) must be apportioned, subject to subsections (7) to (9), between the disposals in such proportions as are just and reasonable.
- (11) Section 614DC of ITA 2007 (connected persons) applies for the purposes of this section in its application as a result of any leasing arrangements (within the meaning of that section) as it applies for the purposes mentioned in that section.”

#### SCHEDULE 4

Section 368

#### SALE AND LEASE-BACK ETC: NEW PART 12A OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 After section 681 insert—

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## “PART 12A

### SALE AND LEASE-BACK ETC

#### CHAPTER 1

##### PAYMENTS CONNECTED WITH TRANSFERRED LAND

###### *Overview*

#### **681A Overview**

This Chapter provides that in certain circumstances where a transfer is made regarding land, and the transferor or an associate becomes liable to make a payment connected with the land, income tax relief for the payment is restricted.

###### *Application of the Chapter*

#### **681AA Transferor or associate becomes liable for payment of rent**

- (1) Section 681AD has effect if—
  - (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and
  - (c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.
- (2) Section 681AE has effect if—
  - (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment of rent under a lease of the land or part of it, and
  - (c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
  - (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.

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- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—
  - (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from—
  - (a) a lease, of the land or part of it, granted (at the time of the transfer or later) by the transferee to the transferor, or
  - (b) another transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

#### **681AB Transferor or associate becomes liable for payment other than rent**

- (1) Section 681AD has effect if—
  - (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - (c) a deduction by way of relevant income tax relief (see section 681AC) is allowed for the payment.
- (2) Section 681AE has effect if—
  - (a) land, or an estate or interest in land, is transferred,
  - (b) the transferor, or a person associated with the transferor, becomes liable to make a payment which is not rent under a lease but is otherwise connected with the land or part of it (whether it is a payment under a rentcharge or under some other transaction), and
  - (c) a relevant deduction from earnings (see section 681AC) is allowed for the payment.
- (3) The reference in subsection (1)(a) or (2)(a) to a transfer of an estate or interest in land includes a reference to any of the following—
  - (a) the granting of a lease or another transaction involving the creation of a new estate or interest in the land,
  - (b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease, and
  - (c) a transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner or one of the owners before and after the transaction or transactions but another person becomes or ceases to be one of the owners.
- (4) In relation to a transaction or series of transactions mentioned in subsection (3)(c), a person is to be regarded as a transferor for the purposes of this Chapter if the person—



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- (a) is an owner before the transaction or transactions, and
  - (b) is not the sole owner afterwards.
- (5) The liability mentioned in subsection (1)(b) or (2)(b) is one resulting from a transaction or series of transactions affecting the land or an estate or interest in it.
- (6) The liability mentioned in subsection (1)(b) or (2)(b) is one arising at the time of the transfer or later.
- (7) The reference in subsection (1)(a) or (2)(a) to a transfer does not include a transfer on or before 14 April 1964.

### **681AC Relevant income tax relief and relevant deduction from earnings**

- (1) For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—
- (a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
  - (b) a deduction in calculating the profits of a UK property business for income tax purposes, and
  - (c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies.
- (2) For the purposes of this Chapter each of the following is a relevant deduction from earnings—
- (a) a deduction under section 336 of ITEPA 2003 (expenses), and
  - (b) a deduction from earnings in calculating losses in an employment for income tax purposes.

*Relief: restriction and carrying forward*

### **681AD Relevant income tax relief: deduction not to exceed commercial rent**

- (1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—
- (a) for the non-excluded element of the payment within section 681AA(1) or 681AB(1), or
  - (b) if there are two or more such payments, for the non-excluded elements of those payments.
- (2) For the purposes of this section—
- (a) in relation to a deduction within section 681AC(1)(a) “relevant period” means—
    - (i) a period of account of the trade, profession or vocation concerned, or
    - (ii) if no accounts of the trade, profession or vocation are drawn up for a period, the basis period of a tax year,
  - (b) in relation to a deduction within section 681AC(1)(b) or (c) “relevant period” means—

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- (i) a period of account of the business or person concerned, or
- (ii) if no accounts of the business are drawn up for a period or the person does not draw up accounts for a period, a tax year, and
- (c) the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).

(3) The rules are—

*Rule 1 — meaning of amount E* For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—

- (a) the non-excluded element of the payment, or
- (b) the non-excluded elements of the payments.

*Rule 2 — calculations* For every relevant period—

- (a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the transfer mentioned in section 681AA(1)(a) or 681AB(1)(a),
- (b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after the date of that transfer, and
- (c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

*Rule 3 — meaning of post-spread period* A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681AA(1) or 681AB(1).

*Rule 4 — the deduction allowed in a relevant period* If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681AJ or 681AK).

*Rule 5 — relevant periods in which no deduction allowed* If a relevant period is a post-spread period, no deduction is allowed for the period.

*Certain deductions from earnings: restriction and carrying forward of relief*

### **681AE Deduction from earnings not to exceed commercial rent**

- (1) Subsection (3) applies to the calculation of the relevant deduction from earnings allowed for the non-excluded element of the payment within section 681AA(2) or 681AB(2).
- (2) For the purposes of this section the non-excluded element of a payment is the element of the payment not excluded under section 681AI (service charges etc).
- (3) The deduction must not exceed the commercial rent for the period for which the payment is made (see section 681AJ or 681AK).

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### **681AF Carrying forward parts of payments**

- (1) This section applies if—
  - (a) section 681AE has effect, and
  - (b) conditions A and B are met.
- (2) Condition A is that under section 681AE part of a payment which would otherwise be allowed as a relevant deduction from earnings is not allowed.
- (3) Condition B is that one or more later payments are made, by the transferor or a person associated with the transferor, under—
  - (a) the lease (if section 681AE has effect because of section 681AA(2)),  
or
  - (b) the rentcharge or other transaction mentioned in section 681AB(2)  
(b) (if section 681AE has effect because of section 681AB(2)).
- (4) The part of the payment mentioned in subsection (2) may be carried forward and treated for the purposes of a relevant deduction from earnings as if it were made—
  - (a) when the next of the later payments is made, and
  - (b) for the period for which that later payment is made.
- (5) So far as a part of a payment carried forward under this section is not allowed as a relevant deduction from earnings, it may be carried forward again under this section.

### **681AG Aggregation and apportionment of payments**

- (1) This section applies for the purposes of section 681AE.
- (2) If more than one payment is made for the same period, the payments must be taken together.
- (3) If payments are made for periods which overlap—
  - (a) the payments must be apportioned, and
  - (b) the apportioned payments which belong to the common part of the overlapping periods must be taken together.
- (4) References in subsections (2) and (3) to payments include references to parts of payments which under section 681AF are treated as if made later than they were made.

### **681AH Payments made for later periods**

- (1) This section applies for the purposes of sections 681AE to 681AG.
- (2) For the purposes of this section the relevant year, in relation to a payment, is the year which begins with the date it is made.
- (3) If a payment is made for a period all of which is after the relevant year, it must be treated as made for the relevant year.

*Status: Point in time view as at 31/12/2012.*

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- (4) If a payment is made for a period part of which is after the relevant year, it must be treated as if a corresponding part of it was made for the relevant year (and no part for a later period).

*Interpretation etc*

**681AI Exclusion of service charges etc**

- (1) This section applies for the purposes of sections 681AD and 681AE.
- (2) A payment must be excluded so far as it is in respect of any of the following—
  - (a) services,
  - (b) the use of relevant assets, and
  - (c) rates usually borne by the tenant.
- (3) The amount excluded must be just and reasonable.
- (4) If a lease or agreement contains provisions fixing the payments or parts of payments which are in respect of services or the use of assets, those provisions are not conclusive.
- (5) A relevant asset is any description of property or rights other than land or an interest in land.

**681AJ Commercial rent: comparison with rent under a lease**

- (1) Subsection (3) applies—
  - (a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AA(1), and
  - (b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AA(2).
- (2) In this section “the actual lease” means the lease mentioned in section 681AA(1)(b) or (2)(b).
- (3) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AA(1)(b) or (2)(b) is made, which—
  - (a) was negotiated in the open market when the actual lease was created,
  - (b) is of the same duration as the actual lease,
  - (c) is subject to the terms and conditions of the actual lease as respects liability for maintenance and repairs, and
  - (d) provides for rent payable at uniform intervals and at an appropriate rate.
- (4) Rent is payable at an appropriate rate if—
  - (a) it is payable at a uniform rate, or
  - (b) in a case where the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for a year is never less than the amount payable for a previous year),

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it progresses by gradations proportionate to those provided by the actual lease.

### **681AK Commercial rent: comparison with payments other than rent**

- (1) Subsection (2) applies—
  - (a) for the purpose of making a comparison under rule 4 of section 681AD(3) if section 681AD has effect because of section 681AB(1), and
  - (b) for the purpose of making a comparison under section 681AE(3) if section 681AE has effect because of section 681AB(2).
- (2) The commercial rent is the rent which might be expected to be paid under a lease, of the land in respect of which the payment mentioned in section 681AB(1)(b) or (2)(b) is made, which—
  - (a) was negotiated in the open market when the rentcharge or other transaction mentioned in section 681AB(1)(b) or (2)(b) was effected,
  - (b) is a tenant's repairing lease, and
  - (c) is of an appropriate duration.
- (3) A tenant's repairing lease is a lease where the lessee is under an obligation to maintain and repair the whole (or substantially the whole) of the premises comprised in the lease.
- (4) To see whether a lease is of an appropriate duration, take the period over which payments are to be made under the rentcharge or other transaction, and—
  - (a) if that period is 200 years or more (or the obligation to make the payments is perpetual) an appropriate duration is 200 years, or
  - (b) if that period is less than 200 years, an appropriate duration is the same duration as that period.

### **681AL Lease and rent**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a lease includes a reference to any of the following—
  - (a) an underlease, sublease, tenancy or licence, and
  - (b) an agreement for a lease, underlease, sublease, tenancy or licence, and
  - (c) in the case of land outside the United Kingdom, an interest corresponding to a lease (as defined here).
- (3) A reference to rent includes a reference to any payment under a lease.
- (4) A reference to rent under a lease includes a reference to expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under any of—
  - (a) sections 61 to 67 of ITTOIA 2005 (land occupied for trade purposes), and
  - (b) sections 292 to 297 of that Act (taxed leases).

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- (5) Expenses within subsection (4) must be treated as having been paid as soon as they were incurred.

### **681AM Associated persons**

- (1) This section applies for the purposes of this Chapter.
- (2) The following persons are associated with one another—
- (a) the transferor in an affected transaction and the transferor in another affected transaction, if the two persons are acting in concert or if the two transactions are in any way reciprocal, and
  - (b) any person who is an associate of either of those associated transferors.
- (3) Two or more bodies corporate are associated with one another if they participate in, or are incorporated for the purposes of, a scheme—
- (a) for the reconstruction of any body or bodies corporate, or
  - (b) for the amalgamation of any two or more bodies corporate.
- (4) Persons are associated with one another if they are associates as defined in section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).
- (5) In subsection (2) “affected transaction” means a transaction within—
- (a) section 681AA(1) or (2) or 681AB(1) or (2), or
  - (b) section 835(1) or (2) or 836(1) or (2) of CTA 2010.

### **681AN Land outside the UK**

In the case of land outside the United Kingdom, expressions in this Chapter relating to interests in land and their disposition must be taken to relate to corresponding interests and dispositions.”

3 After section 681AN insert—

## **“CHAPTER 2**

### NEW LEASE OF LAND AFTER ASSIGNMENT OR SURRENDER

#### *Overview*

### **681B Overview**

- (1) This Chapter provides that in certain circumstances where a lease of land is assigned or surrendered and another lease is granted or assigned—
- (a) consideration received for the assignment or surrender of the first lease is taxed as a receipt of a trade, profession or vocation or charged to income tax, and
  - (b) tax relief is allowed for rent under the other lease.

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- (2) The Chapter provides that in certain circumstances where a lease is varied it is treated as surrendered and another lease is treated as granted.

#### *Application of the Chapter*

#### **681BA New lease after assignment or surrender**

- (1) This Chapter has effect if each of conditions A to E is met.
- (2) Condition A is that—
- (a) a person (“L”) is a lessee of land under a lease which has 50 years or less to run (“the original lease”), and
  - (b) L is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.
- (3) Condition B is that—
- (a) L assigns the original lease to another person or surrenders it to L's landlord, and
  - (b) the consideration for the assignment or surrender would not (apart from this Chapter) be taxable except as capital in L's hands.
- (4) Condition C is that—
- (a) another lease (“the new lease”) is granted, or assigned, to L or a person linked to L, and
  - (b) the new lease is for a term of 15 years or less.
- (5) Condition D is that the new lease—
- (a) is of all or part of the land which was the subject of the original lease, or
  - (b) includes all or part of the land which was the subject of the original lease.
- (6) Condition E is that neither L nor a person linked to L had, before 22 June 1971, a right enforceable at law or in equity to the grant of the new lease.
- (7) If each of conditions A to D is met but condition E is not met, see the relevant provisions in Schedule 2 to CTA 2010 and Schedule 9 to TIOPA 2010.

#### *Taxation of consideration*

#### **681BB Taxation of consideration**

- (1) An appropriate amount must be found under subsection (3) or (4) of—
- (a) the consideration received by L for the assignment or surrender, or
  - (b) each instalment of the consideration (if it is paid in instalments).
- (2) For the purposes of the Income Tax Acts the appropriate amount must be treated in accordance with subsections (6) to (8) and not as a capital receipt.
- (3) If the term of the new lease is one year or less, the appropriate amount of the consideration or instalment is the whole of it.

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- (4) If the term of the new lease is more than one year, the appropriate amount of the consideration or instalment is the proportion of it found by the formula—

$$\frac{16 - N}{15}$$

- (5) In subsection (4) N is the term of the new lease expressed in years (taking part of a year as an appropriate proportion of a year).
- (6) The way the appropriate amount must be treated depends on whether the following conditions are met—
- (a) the consideration is received by L in the course of a trade, profession or vocation, and
  - (b) the rent payable by L, or a person linked to L, under the new lease is allowable as a deduction in calculating profits or losses of a trade, profession or vocation for tax purposes.
- (7) If the conditions are met the appropriate amount must be treated as a receipt of the trade, profession or vocation mentioned in subsection (6)(a).
- (8) If the conditions are not met the appropriate amount must be treated as an amount chargeable to income tax.
- (9) If income tax is charged under subsection (8)—
- (a) it must be charged on the proportion of the appropriate amount arising in the tax year,
  - (b) the person liable for the tax is L, and
  - (c) the amount charged must be treated for income tax purposes as an amount of income.

#### **681BC Position where new lease does not include all original property**

- (1) This section applies for the purposes of section 681BB if the property which is the subject of the new lease does not include all the property which was the subject of the original lease.
- (2) The consideration received by L must be treated as reduced to the portion of it found under subsection (3).
- (3) The portion is that which is reasonably attributable to such part of the original property as—
  - (a) consists of the property which is the subject of the new lease, or
  - (b) is included in the property which is the subject of the new lease.
- (4) The original property is the property which was the subject of the original lease.

#### *Relief for rent under new lease*

#### **681BD Relief for rent under new lease**

- (1) This section applies if the rent under the new lease is payable by a person within the charge to income tax.



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- (2) This section also applies if—
  - (a) Chapter 2 of Part 19 of CTA 2010 (provision for corporation tax corresponding to this Chapter) has effect, and
  - (b) the rent under the new lease is payable by a person within the charge to income tax.
- (3) The provisions of ITTOIA 2005 providing for deductions or allowances by way of income tax relief in respect of payments of rent apply in relation to the rent under the new lease.
- (4) In subsection (2), and in subsection (3) as applied by subsection (2), references to the new lease and rent are to be read as in Chapter 2 of Part 19 of CTA 2010.

#### *New lease treated as ending*

#### **681BE New lease treated as ending**

- (1) Sections 681BF to 681BH treat the new lease as ending in certain circumstances for the purposes of this Chapter.
- (2) If any of those provisions apply in a given case, and the new lease is treated as ending on different dates, it must be treated as ending on the earlier or earliest of them.

#### **681BF Position where rent reduces**

- (1) If the rent for a relevant period exceeds the rent for the following comparable period, the term of the new lease must be treated as ending on the date when the relevant period ends.
- (2) For the purposes of this section—
  - (a) a relevant period is a rental period of the new lease ending before its fifteenth anniversary,
  - (b) the following comparable period (in relation to a relevant period) is the rental period which is of the same duration as the relevant period and which begins on the day following the end of the relevant period,
  - (c) the rent for a period is the total rent payable under the new lease in respect of the period,
  - (d) a rental period is a period in respect of which a payment of rent is to be made, and
  - (e) the fifteenth anniversary of the new lease is the fifteenth anniversary of the date on which its term begins.
- (3) For the purposes of this section—
  - (a) all rental periods of a quarter must be treated as being of the same duration, and
  - (b) all rental periods of a month must be treated as being of the same duration.

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### **681BG Position where lease may be ended**

- (1) This section applies if under the new lease the lessor, or L or a person linked to L, has power to end the lease before the end of the term for which it was granted.
- (2) The term of the lease must be treated as ending on the earliest date with effect from which the lessor, or L or a person linked to L, could end the lease by exercising the power.

### **681BH Position where lease may be varied**

- (1) This section applies if under the new lease L, or a person linked to L, has power to vary, in a manner beneficial to L or a person linked to L, obligations under the lease that are obligations of L or a person linked to L.
- (2) The term of the lease must be treated as ending on the earliest date with effect from which L, or a person linked to L, could vary the obligations by exercising the power.

### **681BI Lease treated as ending: rentcharge**

- (1) Subsection (2) applies if a rentcharge payable by L, or a person linked to L, is secured on all or part of the property subject to the new lease.
- (2) For the purposes of sections 681BF to 681BH the rent payable under the new lease must be treated as equal to the sum of the rentcharge and the rent payable under the lease.

*Lease varied to provide for increased rent*

### **681BJ Lease varied to provide for increased rent**

- (1) This section applies if each of conditions A to D is met.
- (2) Condition A is that—
  - (a) a person (“the lessee”) is a lessee of land under a lease which has 50 years or less to run (“the original lease”), and
  - (b) the lessee is entitled in respect of the rent under the original lease to a deduction by way of relevant income tax relief.
- (3) Condition B is that (by agreement with the landlord) the lessee varies the original lease.
- (4) Condition C is that under the variation—
  - (a) the lessee agrees to pay a rent greater than that payable under the original lease, and
  - (b) the lessee agrees to pay the greater rent in return for a consideration which would not (apart from this Chapter) be taxable except as capital in the lessee's hands.
- (5) Condition D is that under the variation the period during which the greater rent is to be paid ends 15 years or less after the date on which—

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- (a) the consideration is paid to the lessee, or
  - (b) the last instalment of the consideration is paid to the lessee (if it is paid in instalments).
- (6) If this section applies the lessee must be treated for the purposes of this Chapter—
- (a) as having surrendered the original lease for the consideration mentioned in subsection (4)(b), and
  - (b) as having been granted a new lease for a term of 15 years or less but otherwise on the terms of the original lease varied as mentioned in subsection (3).

### *Interpretation*

#### **681BK Relevant income tax relief**

For the purposes of this Chapter each of the following is a deduction by way of relevant income tax relief—

- (a) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
- (b) a deduction in calculating the profits of a UK property business for income tax purposes,
- (c) a deduction in calculating any loss for which relief is given under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and
- (d) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.

#### **681BL Linked persons**

- (1) In this Chapter references to a person linked to L are to a person who is—
  - (a) a partner of L,
  - (b) an associate of L, or
  - (c) an associate of a partner of L.
- (2) “Associate” must be read in accordance with section 681DL (relatives, settlements, persons controlling bodies, joint owners etc).

#### **681BM Lease, lessee, lessor and rent**

- (1) This section applies for the purposes of this Chapter.
- (2) “Lease” includes—
  - (a) an agreement for a lease, and
  - (b) any tenancy.
- (3) “Lease” does not include a mortgage.
- (4) A reference to a lessee or lessor—

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- (a) is to be read in accordance with subsections (2) and (3), and
  - (b) includes a reference to the successors in title of a lessee or lessor.
- (5) “Rent” includes a payment by a tenant for work to maintain or repair leased premises which the lease does not require the tenant to carry out; and “premises” here includes land.
- (6) In the application of this section to Scotland “mortgage” means—
- (a) a standard security, or
  - (b) a heritable security, as defined in the Conveyancing (Scotland) Act 1924, but including a security constituted by ex facie absolute disposition or assignation.”

4 After section 681BM insert—

### “CHAPTER 3

#### LEASED TRADING ASSETS

##### *Overview*

#### **681C Overview**

This Chapter provides that, in certain circumstances where a payment is made under a lease of a trading asset, income tax relief for the payment is restricted.

##### *Application of the Chapter*

#### **681CA Professions and vocations**

In this Chapter a reference to a trade includes a reference to a profession or vocation.

#### **681CB Leased trading assets**

- (1) Section 681CC has effect if—
  - (a) condition A is met, and
  - (b) condition B or C is met.
- (2) Condition A is that—
  - (a) a payment is made by a person under a lease of a relevant asset, and
  - (b) a deduction is allowed for the payment in calculating the profits of a trade for income tax purposes.
- (3) Condition B is that—
  - (a) at a time before the lease's creation the asset was used for the purposes of the trade, and
  - (b) when it was so used it was owned by the person then carrying on the trade.

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- (4) Condition C is that—
- (a) at a time before the lease's creation the asset was used for the purposes of another trade,
  - (b) when it was so used it was owned by the person then carrying on the other trade, and
  - (c) when it was so used, or later, that person was carrying on the trade mentioned in subsection (2).
- (5) The reference in subsection (2)(a) to a lease does not include a lease created on or before 14 April 1964.
- (6) In this section references to a person carrying on a trade are to the person carrying on the trade for the time being.

*Relief: restriction and carrying forward*

#### **681CC Tax deduction not to exceed commercial rent**

- (1) The rules in subsection (3) apply to the calculation of the deduction by way of relevant income tax relief allowed in a relevant period—
- (a) for the non-excluded element of the payment within section 681CB(2), or
  - (b) if there are two or more such payments, for the non-excluded elements of those payments.
- (2) For the purposes of this section—
- (a) “relevant period” means—
    - (i) a period of account of the trade, or
    - (ii) if no accounts of the trade are drawn up for a period, the basis period of a tax year, and
  - (b) the non-excluded element of a payment is the element of the payment not excluded under section 681CD (long funding finance leases).
- (3) The rules are—
- Rule 1 —meaning of amount E* For any relevant period, amount E (which may be nil) is the expense or total expenses to be brought, in accordance with generally accepted accounting practice, into account in the period in respect of—
- (a) the non-excluded element of the payment, or
  - (b) the non-excluded elements of the payments.
- Rule 2 — calculations* For every relevant period—
- (a) calculate the total of amount E for the period and amount E for every previous relevant period ending on or after the date of the creation of the lease mentioned in section 681CB(2)(a),
  - (b) calculate the total of the deductions by way of relevant income tax relief for every previous relevant period ending on or after that date, and
  - (c) subtract the total at (b) from the total at (a) to give the cumulative unrelieved expenses for the period.

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*Rule 3 — meaning of post-spread period* A relevant period is a post-spread period if for that relevant period, and every later relevant period, there are no payments within section 681CB(2).

*Rule 4 — the deduction allowed in a relevant period* If a relevant period is not a post-spread period, the deduction allowed for the period is equal to the cumulative unrelieved expenses for the period, but is the commercial rent for the period if that is less (see section 681CE).

*Rule 5— relevant periods in which no deduction allowed* If a relevant period is a post-spread period, no deduction is allowed for the period.

### **681CD Long funding finance leases**

- (1) This section applies for the purposes of section 681CC.
- (2) A payment must be excluded so far as, in the case of the lessee, it is to be regarded in accordance with Chapter 6A of Part 2 of CAA 2001 as a payment under a lease which is a long funding finance lease for the purposes of that Part.

### **681CE Commercial rent**

- (1) Subsection (3) applies for the purpose of making a comparison under rule 4 of section 681CC(3).
- (2) In this section “the actual lease” means the lease mentioned in section 681CB(2)(a).
- (3) The commercial rent is the rent which might at the relevant time be expected to be paid under a lease of the asset if—
  - (a) the lease were for the rest of the asset's expected normal working life,
  - (b) the rent were payable at uniform intervals and at a uniform rate, and
  - (c) the rent gave a reasonable return for the asset's market value at the relevant time, taking account of the actual lease's terms and conditions.
- (4) The relevant time is the time when the actual lease was created.
- (5) An asset's expected normal working life is the period which might be expected, when it is first put into use, to pass before it is finally put out of use as being unfit for further use.
- (6) In applying subsection (5) it must be assumed that the asset will be used in the normal way, and to the normal extent, throughout the period.
- (7) If the asset is used at the same time partly for the purposes of the trade mentioned in section 681CB(2)(b) and partly for other purposes, the commercial rent as defined in subsection (3) is to be determined by reference to what would be paid for such partial use.

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## *Interpretation*

### **681CF Lease**

- (1) This section applies for the purposes of this Chapter.
- (2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.
- (3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

### **681CG Relevant asset**

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.”

5 After section 681CG insert—

## **“CHAPTER 4**

### **LEASED ASSETS: CAPITAL SUMS**

#### *Overview*

### **681D Overview**

This Chapter provides that in certain circumstances where a payment is made under a lease of an asset, and a capital sum is obtained in respect of an interest in the asset, income tax is charged on an amount not greater than the capital sum.

#### *Application of the Chapter*

### **681DA Application of the Chapter**

This Chapter applies if—

- (a) condition A is met (see section 681DB), and
- (b) condition B, C, D or E is met (see section 681DC).

### **681DB Payment under lease**

- (1) Condition A is that—
  - (a) a payment is made under a lease of a relevant asset, and
  - (b) the payment is one for which a deduction by way of relevant tax relief is allowed.
- (2) Condition A is not met if section 681CC (leased trading assets: tax deductions)—

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- (a) applies to the payment, or
  - (b) would apply to it but for its being excluded under section 681CD (long funding finance leases).
- (3) Condition A is not met if section 865 of CTA 2010 (provision for corporation tax corresponding to section 681CC)—
- (a) applies to the payment, or
  - (b) would apply to it but for its being excluded under section 866 of that Act (long funding finance leases).
- (4) The reference in subsection (1)(a) to a lease does not include a lease created on or before 14 April 1964.

### **681DC Sum obtained**

- (1) Condition B is that the person making the payment—
- (a) obtains a capital sum in respect of the lessee's interest in the lease, and
  - (b) is within the charge to income tax.
- (2) Condition C is that an associate of the person making the payment—
- (a) obtains a capital sum by way of consideration in respect of the lessee's interest in the lease, and
  - (b) is within the charge to income tax.
- (3) Condition D is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
  - (b) the associate obtains a capital sum in respect of the interest, and
  - (c) the associate is within the charge to income tax.
- (4) Condition E is that—
- (a) the lessor's interest in the lease, or any other interest in the asset, belongs to an associate of the person making the payment,
  - (b) an associate of that associate obtains a capital sum by way of consideration in respect of the interest, and
  - (c) the associate obtaining the sum is within the charge to income tax.
- (5) Condition B, C, D or E may be met before, at or after the time when the payment is made.
- (6) Condition B or C is not met if—
- (a) the lease is a hire-purchase agreement for plant or machinery, and
  - (b) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.
- (7) Condition D or E is not met if—
- (a) the capital sum is obtained in respect of the lessee's interest in the lease,
  - (b) the lease is a hire-purchase agreement for plant or machinery, and



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- (c) the capital sum is required to be brought into account as the whole or part of the disposal value of the plant or machinery under section 68 of CAA 2001.

#### *Charge to income tax*

#### **681DD Charge to income tax**

- (1) The person obtaining the capital sum is charged to income tax, for the tax year in which the sum is obtained, on the amount given by subsection (2).
- (2) That amount is—
  - (a) the amount of the payment for which a deduction by way of relevant tax relief is allowed, or
  - (b) the total amount of such payments (if more than one).
- (3) But subsections (1) and (2) have effect subject to—
  - (a) subsections (4) to (7), and
  - (b) section 681DE(3) (hire-purchase agreements).
- (4) The amount on which tax is charged under this section is not to exceed the capital sum obtained (but see section 681DE(4)).
- (5) Subsection (6) applies if—
  - (a) income tax is charged under this section in respect of a capital sum, and
  - (b) a payment or part of a payment is taken into account in deciding the amount on which the tax is charged.
- (6) The payment or part must be left out of account in deciding—
  - (a) whether income tax is to be charged under this section in respect of another capital sum, and
  - (b) the amount on which the tax is to be charged (if any is to be charged).
- (7) The order in which subsections (5) and (6) are applied is the order in which capital sums are obtained.
- (8) An amount on which income tax is charged under this section is treated for income tax purposes as an amount of income.

#### **681DE Hire-purchase agreements**

- (1) This section applies if—
  - (a) the lease is a hire-purchase agreement (as defined in section 998A), and
  - (b) the capital sum is obtained in respect of the lessee's interest in the lease (whether it is obtained by the person making the payment or by an associate).
- (2) Find the total of the following amounts—
  - (a) so much of any payment made under the lease by the person obtaining the capital sum as is not a payment for which a deduction by way of relevant tax relief is allowed, and

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- (b) if the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.
- (3) If the total of the amounts found under subsection (2) is equal to or greater than the capital sum, income tax is not charged under section 681DD in respect of the capital sum.
- (4) If the total of those amounts is less than the capital sum, in applying section 681DD(4) that total must be deducted from the capital sum.
- (5) If the capital sum is the consideration for part only of the lessee's interest in the lease—
  - (a) any amount found under subsection (2) (and still unallowed) must be reduced to a just and reasonable proportion of it, and
  - (b) in calculating that proportion account must be taken of the degree to which the payments mentioned in subsection (2) have contributed to the value of what is disposed of in return for the capital sum.
- (6) Subsection (7) applies if—
  - (a) more than one capital sum is (or is treated as) obtained by the same person in respect of the lessee's interest in the lease, and
  - (b) in arriving at a total under subsection (2) a payment is taken into account in respect of one of the capital sums.
- (7) So far as the payment is so taken into account it must not be taken into account in applying subsection (2) to another of the capital sums.
- (8) The order in which subsections (6) and (7) are applied is the order in which capital sums are obtained.
- (9) If the capital sum is obtained by the personal representatives of a deceased person, the reference in subsection (2)(a) to any payment made under the lease by the person obtaining the capital sum includes any payment made under the lease by the deceased.

#### **681DF Adjustments where sum obtained before payment made**

- (1) This section applies if a capital sum is obtained as mentioned in section 681DC and later a payment is made as mentioned in section 681DB.
- (2) Adjustments must be made if they are needed to give effect to a charge to income tax under section 681DD in respect of the capital sum.
- (3) An adjustment may be made within the period ending with the fifth anniversary of the 31 January following the tax year in which the payment is made.
- (4) Subsection (3) applies despite any time limit specified in the Income Tax Acts.

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### *Obtaining of sum*

#### **681DG Sum obtained in respect of interest**

A reference in this Chapter to a sum obtained in respect of an interest in an asset (whether the lessee's interest in a lease of the asset or the lessor's interest or any other interest) includes a reference to—

- (a) insurance money obtained in respect of the interest, and
- (b) sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions disposing of it.

#### **681DH Sum obtained in respect of lessee's interest**

- (1) This section applies to a reference in this Chapter to a sum obtained in respect of the lessee's interest in a lease of an asset.
- (2) The reference includes a reference to sums representing the consideration in money or money's worth obtained on any of the following occasions—
  - (a) a surrender of the interest to the lessor,
  - (b) an assignment of the lease, and
  - (c) the creation of a sublease or another interest out of the lease.
- (3) The reference also includes a reference to sums representing money or money's worth obtained in respect of the interest by a transaction or series of transactions under which the lessee's rights are merged in any way with the lessor's rights or with any other rights as respects the asset.
- (4) Subsection (3) applies so far as the money or money's worth is attributable to the lessee's rights under the lease.

#### **681DI Disposal of interest to associate**

- (1) This section applies for the purposes of this Chapter if a person disposes of an interest in an asset to a person who is the first person's associate (and the interest may be the lessee's interest in a lease of the asset or the lessor's interest or any other interest).
- (2) The person disposing of the interest must be treated as obtaining in respect of it the greatest of—
  - (a) the sum in fact obtained by the person,
  - (b) the value of the interest in the open market, and
  - (c) the value of the interest to the person to whom it is in effect transferred.
- (3) The disposal—
  - (a) may be direct or indirect, and
  - (b) may be effected by a transaction or series of transactions described in section 681DG(b) or 681DH(3).

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### *Apportionment*

#### **681DJ Apportionment of payments made and of sums obtained**

- (1) This section applies for the purposes of this Chapter.
- (2) Subsection (3) applies if—
  - (a) a payment is made,
  - (b) it is one for which a deduction by way of relevant tax relief is allowed, and
  - (c) it is made by persons carrying on a trade or profession in partnership.
- (3) The payment must be apportioned in a manner which is just and reasonable.
- (4) Subsection (5) applies if—
  - (a) a sum is obtained in respect of an interest in an asset,
  - (b) the sum is obtained by persons carrying on a trade or profession in partnership, and
  - (c) the asset is and continues to be used for the purposes of the trade or profession.
- (5) The sum must be apportioned between the partners in the shares in which they are entitled to the profits of the trade or profession at the time the sum is obtained.
- (6) Subsection (7) applies if—
  - (a) a sum is obtained in respect of an interest in an asset, and
  - (b) the sum is obtained by persons jointly entitled to the interest.
- (7) The sum must be apportioned according to their respective rights in the interest.
- (8) Subsections (6) and (7) are subject to subsections (4) and (5).

#### **681DK Manner of apportionment**

- (1) Subsections (2) and (3) apply if—
  - (a) a payment or sum is to be apportioned under section 681DJ or under section 880 of CTA 2010,
  - (b) at the time of the apportionment it appears that it is material to the liability to tax (whether income tax or corporation tax, and for whatever period) of two or more persons (in this section referred to collectively as “the set”),
  - (c) a question arises as to the manner in which the payment or sum is to be apportioned, and
  - (d) at the time of the apportionment, it appears that the apportionment is material to the income tax liability (for whatever period) of—
    - (i) a person, or some two or more persons, in the set, or
    - (ii) all the persons in the set.

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- (2) For the purposes of income tax of the person or persons mentioned in subsection (1)(d), the question is to be determined in the same way as an appeal.
- (3) All the persons in the set are entitled to be a party to the proceedings.

### *Interpretation*

#### **681DL Associates**

- (1) This section applies for the purposes of this Chapter.
- (2) Persons are associates if they are associated with each other.
- (3) The following are associated with each other—
  - (a) an individual and the individual's spouse or civil partner or relative,
  - (b) an individual and a spouse or civil partner of a relative of the individual,
  - (c) an individual and a relative of the individual's spouse or civil partner,
  - (d) an individual and a spouse or civil partner of a relative of the individual's spouse or civil partner.
- (4) The following are associated with each other—
  - (a) a person as trustee of a settlement and an individual who (in relation to the settlement) is a settlor,
  - (b) a person as trustee of a settlement and a person associated with an individual who (in relation to the settlement) is a settlor.
- (5) The following are associated with each other—
  - (a) a person and a body of persons of which the person has control,
  - (b) a person and a body of persons of which persons associated with the person have control,
  - (c) a person and a body of persons of which the person and persons associated with the person have control,
  - (d) two or more bodies of persons associated with the same person under paragraphs (a) to (c).
- (6) In relation to a disposal by joint owners, the joint owners and any person associated with any of them are associated with each other.
- (7) For the purposes of this section—
  - (a) a relative is a brother, sister, ancestor or lineal descendant,
  - (b) a body of persons includes a partnership, and
  - (c) “settlement” and “settlor” have the meanings given by section 620 of ITTOIA 2005.

#### **681DM Capital sum**

For the purposes of this Chapter a capital sum is any sum of money, or any money's worth, except so far as it or any part of it—

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- (a) is to be treated for income tax purposes as a receipt to be taken into account in calculating the profits or losses of a trade, profession or vocation, or
- (b) is (apart from this Chapter) chargeable to income tax under or by virtue of any provision to which section 1016 applies.

### **681DN Lease**

- (1) This section applies for the purposes of this Chapter.
- (2) A lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset.
- (3) In particular it includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it.

### **681DO Relevant asset**

For the purposes of this Chapter a relevant asset is any description of property or rights other than land or an interest in land.

### **681DP Relevant tax relief**

For the purposes of this Chapter each of the following is a deduction by way of relevant tax relief—

- (a) a deduction in calculating profits or losses of a trade for corporation tax purposes,
- (b) a deduction in calculating any loss for which relief is given under section 91 of CTA 2010 (losses from miscellaneous transactions), or in calculating profits or gains chargeable to corporation tax under or by virtue of any provision to which section 1173 of CTA 2010 applies (miscellaneous charges),
- (c) a deduction under section 76 of ICTA (insurance companies),
- (d) a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business),
- (e) a deduction in calculating profits or losses of a trade, profession or vocation for income tax purposes,
- (f) a deduction in calculating any loss for which relief is allowed under section 152 (losses from miscellaneous transactions), or in calculating profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies, and
- (g) a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) or allowed in calculating losses in an employment for income tax purposes.”

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## SCHEDULE 5

Section 369

### FACTORING OF INCOME ETC: NEW CHAPTERS 5B AND 5C OF PART 13 OF ITA 2007

- 1 ITA 2007 is amended as follows.
- 2 After section 809AZG insert—

#### “CHAPTER 5B

#### FINANCE ARRANGEMENTS

##### *Type 1 arrangements*

#### **809BZA Type 1 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 1 finance arrangement if conditions A and B are met.
- (2) Condition A is that under the arrangement—
  - (a) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
  - (b) the borrower or a person connected with the borrower makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
  - (c) the lender or a person connected with the lender is entitled to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the borrower's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) If the borrower is a partnership the reference to the borrower's accounts includes a reference to the accounts of any member of the partnership.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.

#### **809BZB Certain tax consequences not to have effect**

- (1) This section applies if a type 1 finance arrangement would have the relevant effect (ignoring this section).
- (2) The arrangement is not to have that effect.
- (3) The relevant effect is that—
  - (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to income tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the borrower

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- or of a person connected with the borrower is not so brought into account, or
- (c) the borrower or a person connected with the borrower becomes entitled to an income deduction.
- (4) But if the borrower is a partnership the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to income tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a member of the partnership is not so brought into account, or
- (c) a member of the partnership becomes entitled to an income deduction.
- (5) For the purposes of this section the borrower and the lender are not connected with one another.
- (6) An income deduction is—
- (a) a deduction in calculating income for income tax purposes, or
- (b) a deduction from total income.

#### **809BZC Payments treated as borrower's income**

- (1) This section applies if—
- (a) a type 1 finance arrangement would not have the relevant effect (ignoring section 809BZB(2)),
- (b) that arrangement would not have the corresponding corporation-tax effect (ignoring section 759(2) of CTA 2010), and
- (c) the borrower is—
- (i) within the charge to income tax, or
- (ii) a partnership at least one member of which is within the charge to income tax.
- (2) The payments mentioned in section 809BZA(2)(c) must be treated for income tax purposes as income of the borrower payable in respect of the security.
- (3) Subsection (2) applies whether or not the payments are also the income of another person for tax purposes.
- (4) Subsections (3) to (6) of section 809BZB (meaning of relevant effect) apply for the purposes of this section as for those of that.
- (5) In subsection (1)(b) “the corresponding corporation-tax effect” means the relevant effect as defined by section 759(3) to (6) of CTA 2010 (provision for corporation tax corresponding to section 809BZB(3) to (6)).

#### **809BZD Deemed interest if borrower is not a partnership**

- (1) This section applies if—
- (a) there is a type 1 finance arrangement,
- (b) the borrower is not a partnership,



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- (c) the arrangement is prevented by section 809BZB from having the relevant effect in relation to the borrower, or section 809BZC applies to the borrower, and
  - (d) in accordance with generally accepted accounting practice the borrower's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the borrower may treat the amount as interest payable on a loan.
- (3) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.

#### **809BZE Deemed interest if borrower is a partnership**

- (1) This section applies if each of conditions A to C is met.
- (2) Condition A is that—
- (a) there is a type 1 finance arrangement, and
  - (b) the borrower is a partnership.
- (3) Condition B is that—
- (a) the arrangement is prevented by section 809BZB from having the relevant effect in relation to a person who is a member of the partnership, or
  - (b) section 809BZC applies to the partnership (in which event “the person” in subsections (4) and (5) means the person within the charge to income tax who is a member of the partnership).
- (4) Condition C is that in accordance with generally accepted accounting practice the person's accounts, or the partnership's accounts, record an amount as a finance charge in respect of the advance.
- (5) For income tax purposes the person may treat the amount as interest payable by the partnership on a loan.
- (6) If an amount is treated as interest (“deemed interest”) under subsection (5), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZA(2)(c) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.”

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### “Type 2 arrangements

#### **809BZF Type 2 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 2 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
  - (a) under the arrangement a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (c) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (d) there is a relevant change in relation to the partnership (see section 809BZG), and
  - (e) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the transferor's accounts.

#### **809BZG Relevant change in relation to partnership**

- (1) For the purposes of this Chapter there is a relevant change in relation to a partnership if condition A or condition B is met.
- (2) Condition A is that in connection with the arrangement the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition B is that—
  - (a) in connection with the arrangement there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the arrangement becomes at any time connected with the lender.
- (4) An event occurs in connection with the arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) If there is a relevant change in relation to a partnership, a reference in this Chapter to the person involved in the change is—
  - (a) if it is condition A that is met, to the person who becomes a member of the partnership, and

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- (b) if it is condition B that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

### **809BZH Certain tax consequences not to have effect**

- (1) This section applies if—
  - (a) there is a type 2 finance arrangement, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) In such a case—
  - (a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to the transferor as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly the finance arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
  - (a) an amount of income on which the transferor would otherwise have been charged to income tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of the transferor is not so brought into account, or
  - (c) the transferor becomes entitled to an income deduction.
- (4) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZF(2)(e) were payable to the partnership before the relevant change in relation to it occurred.
- (5) An income deduction is—
  - (a) a deduction in calculating income for income tax purposes, or
  - (b) a deduction from total income.

### **809BZI Deemed interest**

- (1) This section applies if—
  - (a) there is a type 2 finance arrangement,
  - (b) the transferor is a person within the charge to income tax, and
  - (c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the transferor may treat the amount as interest payable by the transferor on a loan.
- (3) The reference in subsection (1) to the partnership's accounts includes a reference to the transferor's accounts.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
  - (a) treat the payments mentioned in section 809BZF(2)(e) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,

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- (b) treat the interest elements of the payments as paid when the payments are paid, and
- (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.”

4 After section 809BZI insert—

*“Type 3 arrangements*

**809BZJ Type 3 finance arrangement defined**

- (1) For the purposes of this Chapter an arrangement is a type 3 finance arrangement if conditions A and B are met.
- (2) Condition A is that—
  - (a) a partnership holds an asset (“the security”) as a partnership asset at any time before the arrangement is made,
  - (b) under the arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (c) there is a relevant change in relation to the partnership (see section 809BZG), and
  - (d) under the arrangement the share in the partnership's profits of the person involved in the change is determined by reference (wholly or partly) to payments in respect of the security.
- (3) Condition B is that in accordance with generally accepted accounting practice—
  - (a) the partnership's accounts for the period in which the advance is received record a financial liability in respect of it, and
  - (b) the payments reduce the amount of the financial liability.
- (4) The reference to the partnership's accounts includes a reference to the accounts of any person who is a member of the partnership immediately before the arrangement is made.

**809BZK Certain tax consequences not to have effect**

- (1) This section applies if—
  - (a) there is a type 3 finance arrangement, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this section).
- (2) The relevant effect is that—
  - (a) an amount of income on which a relevant member would otherwise have been charged to income tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for income tax purposes any income of a relevant member is not so brought into account, or
  - (c) a relevant member becomes entitled to an income deduction.
- (3) A relevant member is a person who—

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- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) If this section applies—
- (a) Part 9 of ITTOIA 2005 (partnerships) is to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly the finance arrangement is not to have the relevant effect.
- (5) In deciding whether subsection (1)(b) is met assume that amounts of income equal to the payments mentioned in section 809BZJ(2)(d) were payable to the partnership before the relevant change in relation to it occurred.
- (6) An income deduction is—
- (a) a deduction in calculating income for income tax purposes, or
  - (b) a deduction from total income.

#### **809BZL Deemed interest**

- (1) This section applies if—
- (a) there is a type 3 finance arrangement,
  - (b) a relevant member is a person within the charge to income tax, and
  - (c) in accordance with generally accepted accounting practice the partnership's accounts record an amount as a finance charge in respect of the advance.
- (2) For income tax purposes the relevant member may treat the amount as interest payable by the partnership on a loan.
- (3) The reference in subsection (1) to the partnership's accounts includes a reference to the accounts of any relevant member.
- (4) If an amount is treated as interest (“deemed interest”) under subsection (2), to find out when it is paid—
- (a) treat the payments mentioned in section 809BZJ(2)(d) as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance,
  - (b) treat the interest elements of the payments as paid when the payments are paid, and
  - (c) treat the deemed interest as paid at the times when the interest elements are treated as paid.
- (5) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.”

*Status: Point in time view as at 31/12/2012.*

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### *“Exceptions*

#### **809BZM Exceptions: preliminary**

- (1) Sections 809BZN to 809BZP make provision for finance arrangement codes not to apply in certain circumstances.
- (2) For the purposes of those sections each of the following groups of provisions is a finance arrangement code—
  - (a) sections 809BZA to 809BZE (type 1 arrangements),
  - (b) sections 809BZF to 809BZI (type 2 arrangements), and
  - (c) sections 809BZJ to 809BZL (type 3 arrangements).

#### **809BZN Exceptions**

- (1) A finance arrangement code does not apply if the whole of the advance under the arrangement—
  - (a) is charged to tax on a relevant person as an amount of income,
  - (b) is brought into account in calculating for tax purposes any income of a relevant person, or
  - (c) is brought into account for the purposes of any provision of CAA 2001 as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.
- (2) Treat subsection (1)(c) as not met if—
  - (a) the receipt gives rise, or proceeds give rise, to a balancing charge, and
  - (b) the amount of the balancing charge is limited by any provision of CAA 2001.
- (3) A finance arrangement code does not apply if at all times the whole of the advance under the arrangement—
  - (a) is a debtor relationship of a relevant person for the purposes of Part 5 of CTA 2009 (loan relationships), or
  - (b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.
- (4) In subsection (3) references to a debtor relationship do not include references to a relationship to which Chapter 2 of Part 6 of CTA 2009 applies (relevant non-lending relationships).
- (5) A finance arrangement code does not apply so far as—
  - (a) section 263A of TCGA 1992 applies in relation to the arrangement (agreements for sale and repurchase of securities), or
  - (b) Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009 applies in relation to the arrangement (sale and repurchase of securities, and repos).

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- (6) A finance arrangement code does not apply so far as Part 10A of this Act, Chapter 4 of Part 4 of TCGA 1992 or Chapter 6 of Part 6 of CTA 2009 has effect in relation to the arrangement (alternative finance arrangements).
- (7) A finance arrangement code does not apply so far as the security is plant or machinery which is the subject of a sale and finance leaseback.
- (8) For the purposes of subsection (7) apply section 221 of CAA 2001 to determine whether plant or machinery is the subject of a sale and finance leaseback.
- (9) A finance arrangement code does not apply so far as sections 228B and 228C of CAA 2001 (finance leaseback) apply in relation to the arrangement.
- (10) Section 809BZO defines a relevant person for the purposes of this section.

#### **809BZO Exceptions: relevant person**

- (1) This section defines a relevant person for the purposes of section 809BZN.
- (2) If (apart from sections 809BZN and 809BZP) sections 809BZA to 809BZE would apply, each of the following is a relevant person—
  - (a) the borrower, and
  - (b) a person connected with the borrower or (if the borrower is a partnership) a member of the partnership.
- (3) If (apart from sections 809BZN and 809BZP) sections 809BZF to 809BZI would apply, the transferor is a relevant person.
- (4) If (apart from sections 809BZN and 809BZP) sections 809BZJ to 809BZL would apply, a relevant member as there defined is a relevant person.
- (5) For the purposes of subsection (2)(b) the persons connected with the borrower include any persons who under section 993 (meaning of “connected”) are connected with the borrower.

#### **809BZP Power to make further exceptions**

- (1) The Treasury may make regulations prescribing other circumstances in which a finance arrangement code is not to apply.
- (2) The regulations may amend sections 809BZN and 809BZO.
- (3) The power to make regulations includes—
  - (a) power to make provision that has effect in relation to times before the making of the regulations (but not times before 6 June 2006),
  - (b) power to make different provision for different cases or different purposes, and
  - (c) power to make incidental, supplemental, consequential and transitional provision and savings.”

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### *“Supplementary*

#### **809BZQ Accounts**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to the accounts of a person includes (if the person is a company) a reference to the consolidated group accounts of a group of companies of which it is a member.
- (3) In determining whether accounts record an amount as a financial liability in respect of an advance, assume that the period in which the advance is received ended immediately after the receipt of the advance.
- (4) If a person does not draw up accounts in accordance with generally accepted accounting practice, assume that the person drew up the accounts in accordance with that practice.

#### **809BZR Arrangements**

A reference in this Chapter to an arrangement includes a reference to an agreement or understanding (whether or not legally enforceable).

#### **809BZS Assets**

- (1) This section applies for the purposes of this Chapter.
- (2) A reference to a person receiving an asset includes—
  - (a) a reference to the person obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it, and
  - (b) a reference to the discharge (in whole or part) of a liability of the person.
- (3) A reference to a disposal of an asset includes a reference to anything constituting a disposal of it for the purposes of TCGA 1992.
- (4) A reference to payments in respect of an asset includes—
  - (a) a reference to payments in respect of another asset substituted for it under the arrangement, and
  - (b) a reference to obtaining (directly or indirectly) the value of an asset or otherwise deriving (directly or indirectly) a benefit from it.”

7

After section 809BZS insert—



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## “CHAPTER 5C

### LOAN OR CREDIT TRANSACTIONS

#### **809CZA Loan or credit transaction defined**

- (1) This section defines a loan or credit transaction for the purposes of sections 809CZB and 809CZC.
- (2) A transaction is a loan or credit transaction if it is—
  - (a) effected with reference to the lending of money or the varying of the terms on which money is lent, or
  - (b) effected with a view to enabling or facilitating an arrangement concerning the lending of money or the varying of the terms on which money is lent.
- (3) A transaction is a loan or credit transaction if it is—
  - (a) effected with reference to the giving of credit or the varying of the terms on which credit is given, or
  - (b) effected with a view to enabling or facilitating an arrangement concerning the giving of credit or the varying of the terms on which credit is given.
- (4) Subsection (2) has effect whether the transaction is effected—
  - (a) between the lender and borrower,
  - (b) between either of them and a person connected with the other, or
  - (c) between a person connected with one and a person connected with the other.
- (5) Subsection (3) has effect whether the transaction is effected—
  - (a) between the creditor and debtor,
  - (b) between either of them and a person connected with the other, or
  - (c) between a person connected with one and a person connected with the other.

#### **809CZB Certain payments treated as yearly interest**

- (1) This section applies if a loan or credit transaction provides for a payment which is not interest but is—
  - (a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income, or
  - (b) an annuity or other annual payment which is from a source in the United Kingdom and chargeable to corporation tax under Chapter 5 of Part 10 of CTA 2009 (distributions from unauthorised unit trusts) or Chapter 7 of that Part (annual payments not otherwise charged).
- (2) The payment must be treated for the purposes of the Income Tax Acts as if it were a payment of yearly interest (see, in particular, section 874).

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### **809CZC Tax charged on income transferred**

- (1) This section applies if—
  - (a) under a loan or credit transaction a person transfers income arising from property,
  - (b) the person is not, as a result of Chapter 5B (finance arrangements), chargeable to income tax on the income transferred, and
  - (c) the person is within the charge to income tax.
- (2) In such a case—
  - (a) income tax is charged under this section,
  - (b) the tax is charged on an amount equal to the full amount of the income transferred,
  - (c) the tax is charged for the tax year in which the transfer takes place, and
  - (d) the person who transfers the income is liable for the tax.
- (3) This section does not prejudice the liability of any other person to tax.
- (4) For the purposes of this section a person transfers income if the person surrenders, waives or forgoes it.
- (5) Subsection (6) applies for the purposes of this section if—
  - (a) credit is given for the purchase price of property, and
  - (b) the rights attaching to the property are such that the buyer's rights to income from the property are suspended or restricted during the life of the debt.
- (6) The buyer must be treated as surrendering income of an amount equal to the income the buyer in effect forgoes by obtaining the credit.
- (7) For the purposes of this section an amount of income payable subject to deduction of income tax must be taken as the amount before deduction of tax.”

## SCHEDULE 6

Section 370

### UK REPRESENTATIVES OF NON-UK RESIDENTS

#### PART 1

##### NEW CHAPTERS 2B AND 2C OF PART 14 OF ITA 2007

1 After section 835B of ITA 2007 (which is inserted by Schedule 7) insert—

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## “CHAPTER 2B

### UK REPRESENTATIVE OF NON-UK RESIDENT

#### *Introduction*

#### **835C Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to income tax.
- (2) For obligations and liabilities in relation to income tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2C.”

2 After section 835C insert—

#### **“835D Income tax chargeable on company's income: application**

This Chapter does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”

3 After section 835D insert—

#### *“Branches and agencies*

#### **835E Branch or agency treated as UK representative**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to—
  - (a) the amount of any income from the trade, profession or vocation that arises (directly or indirectly) through or from the branch or agency, and
  - (b) the amount of any income from property or rights which are used by, or held by or for, the branch or agency.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2C in relation to an amount within that subsection.

*Rule 1* The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

*Rule 2* The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

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*Rule 3* If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.

(4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 835F.

(5) This section needs to be read with sections 835G to 835K (which provide for descriptions of persons who are not to be regarded as the UK representative of a non-UK resident if certain conditions are met).”

4 After section 835E insert—

**“835F Trade or profession carried on in partnership**

(1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.

(2) The trade or profession carried on through the branch or agency is, for the purposes of section 835E and Chapter 2C, to be treated as including the notional trade or profession.

(3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—

- (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
- (b) any member of the partnership is resident in the United Kingdom.

(4) The notional trade or profession is, for the purposes of section 835E and Chapter 2C, to be treated as being a trade carried on in the United Kingdom through the partnership as such.

(5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

5 After section 835F insert—

*“Persons who are not UK representatives*

**835G Agents**

(1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an agent in the United Kingdom.

(2) The agent is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) arising to the non-UK resident from—

- (a) so much of the non-UK resident's business as relates to disregarded transactions, or
- (b) property or rights which, as a result of disregarded transactions, are used by, or held by or for, the agent on behalf of the non-UK resident.

(3) “Disregarded transactions” are transactions—

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- (a) carried out through the agent in the United Kingdom, and
- (b) in respect of which the agent does not act in the course of carrying on a regular agency for the non-UK resident.”

6 After section 835G insert—

**“835H Brokers**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) The broker is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to a transaction carried out through the broker in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent broker conditions are met in relation to the transaction (see section 835L).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through a broker in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).”

7 After section 835H insert—

**“835I Investment managers**

- (1) This section applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (2) The investment manager is not the UK representative of the non-UK resident in relation to an amount within section 835E(2) if—
  - (a) the amount is transaction income in relation to an investment transaction carried out through the investment manager in the United Kingdom on behalf of the non-UK resident, and
  - (b) the independent investment manager conditions are met in relation to the investment transaction (see section 835M).
- (3) In subsection (2) “transaction income”, in relation to a transaction carried out through an investment manager in the United Kingdom on behalf of a non-UK resident, has the same meaning as in Chapter 1 (see section 814(5)).”

8 After section 835I insert—

**“835J Persons acting under alternative finance arrangements**

- (1) Subsection (2) applies if an amount within section 835E(2) arising to a non-UK resident consists of alternative finance return.
- (2) Neither of the following is the UK representative of the non-UK resident in relation to the amount—
  - (a) the other party to the alternative finance arrangements,
  - (b) any other person acting for the non-UK resident in relation to the alternative finance arrangements.

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(3) In subsection (1) “alternative finance return” means alternative finance return within the application of section 564I, 564K or 564L(2) or (3).

(4) In subsection (2) the reference to “the alternative finance arrangements” is a reference to the alternative finance arrangements under which the alternative finance return mentioned in subsection (1) arises.”

9 After section 835J insert—

**“835K Lloyd's agents**

(1) This section applies if—

- (a) a non-UK resident (“X”) is a member of Lloyd's, and
- (b) an amount within section 835E(2) arises to X from X's underwriting business.

(2) A person who has been X's members' agent or the managing agent of the syndicate in question is not the UK representative of X in relation to the amount or to matters connected with the amount.

(3) For the purposes of this section—

- (a) X is a member of Lloyd's if X is a member within the meaning of Chapter 3 of Part 2 of FA 1993, and
- (b) “members' agent” and “managing agent” are to be construed in accordance with section 184 of that Act.”

10 After section 835K insert—

*“The independent broker conditions*

**835L The independent broker conditions**

(1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if conditions A to D are met.

(2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.

(3) Condition B is that the transaction is carried out in the ordinary course of that business.

(4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.

(5) Condition D is that the broker does not fall (apart from this subsection) to be treated under this Chapter, or under Chapter 1 of Part 7A of TCGA 1992, as a UK representative of the non-UK resident in relation to any amounts that—

- (a) are not included in transaction income in relation to the transaction (see section 835H(2) and (3)), and
- (b) are chargeable to tax for the same tax year as that transaction income.”

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11 After section 835L insert—

*“The independent investment manager conditions*

**835M The independent investment manager conditions**

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if conditions A to E are met.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 835N).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.”

12 After section 835M insert—

**“835N Investment managers: the 20% rule**

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that, in relation to a qualifying period, it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.”

13 After section 835N insert—

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### **“835O Meaning of “qualifying period”, “relevant disregarded income” and “beneficial entitlement”**

- (1) This section applies for the purposes of this Chapter.
- (2) A “qualifying period” means—
  - (a) the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) The “relevant disregarded income” of the non-UK resident for a qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from investment transactions—
  - (a) carried out by the investment manager on the non-UK resident's behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.
- (4) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (5).
- (5) The interests and rights referred to in subsection (4) are—
  - (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or
  - (b) an interest in, or other rights in relation to, the non-UK resident.”

14 After section 835O insert—

### **“835P Treatment of transactions where 20% rule not met**

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction, but only in relation to so much of the transaction income in relation to the transaction (see section 835I(2) and (3)) as does not represent an amount—
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.”

15 After section 835P insert—



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### **“835Q Application of 20% rule to collective investment schemes**

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme (so far as the transaction is one in respect of which amounts so arise or accrue).
- (3) In applying this section make the following assumptions—
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the tax year in which the transaction income mentioned in section 835I(2) is chargeable to tax, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 835N to 835P have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
  - (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would, for tax years comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—
    - (i) carried out by the investment manager, and
    - (ii) assumed to be carried out on behalf of the company.
- (7) In this section—

“collective investment scheme” has the meaning given by section 235 of FISMA 2000, and

“participant”, in relation to a collective investment scheme, is construed in accordance with that section.”

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### “Supplementary

#### **835R Supplementary provision**

- (1) For the purposes of this Chapter a person is to be regarded as carrying out a transaction on behalf of another if the person—
  - (a) undertakes the transaction, whether on behalf of or to the account of the other, or
  - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.”

17 After section 835R insert—

#### **“835S Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) “Branch or agency” means any factorship, agency, receivership, branch or management.
- (3) “Investment manager” has the same meaning as in Chapter 1 (see section 827).
- (4) “Investment transaction” means any transaction of a description specified for the purposes of this section in regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (5) Provision made in regulations under subsection (4) may, in particular, have effect in relation to the tax year current on the day on which the regulations are made.”

18 After section 835S insert—

### “CHAPTER 2C

#### INCOME TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

#### **835T Introduction to Chapter**

- (1) This Chapter applies to the enactments relating to income tax so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.
- (2) Those enactments have effect in accordance with section 835U in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 2B.
- (3) In this section “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.”

19 After section 835T insert—

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

### **“835U Obligations and liabilities of UK representative**

- (1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.
- (2) Subsection (3) applies if—
  - (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability—
  - (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 835V and 835W.”

20 After section 835U insert—

### **“835V Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 835U unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 835U unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 835U in a case where the representative is X's independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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) An obligation of X to provide information is not discharged by virtue of section 835U in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 835U by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 835U unless—
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.
- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty’s Revenue and Customs or to any officer of Revenue and Customs.”

21 After section 835V insert—

**“835W Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 835U liable to be proceeded against for a criminal offence unless the person—
  - (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 835U liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—
  - (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 835X(3) (after being indemnified for any other liabilities under section 835X).”

22 After section 835W insert—

**“835X Indemnities**

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 835U.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 835U the agent has discharged or to which the agent is subject.
- (3) The sums are those which—

*Status: Point in time view as at 31/12/2012.*

**Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)

- (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
- (b) are received by the independent agent on behalf of the non-UK resident.”

23 After section 835X insert—

**“835Y Meaning of “independent agent”**

- (1) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (2) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.”

**PART 2**

NEW PART 7A OF TCGA 1992

24 After section 271 of TCGA 1992 insert—

**“PART 7A**

UK REPRESENTATIVES OF NON-UK RESIDENTS

**CHAPTER 1**

TREATMENT OF BRANCH OR AGENCY AS  
UK REPRESENTATIVE OF NON-UK RESIDENT

*Introduction*

**271A Overview of Chapter**

- (1) This Chapter provides for a branch or agency to be treated as the UK representative of a non-UK resident in respect of certain amounts chargeable to capital gains tax.
- (2) For obligations and liabilities in relation to capital gains tax imposed on a branch or agency which under this Chapter is treated as the UK representative of a non-UK resident, see Chapter 2.”

25 After section 271A insert—

*Status: Point in time view as at 31/12/2012.*

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### *“Branches and agencies*

#### **271B Branch or agency treated as UK representative**

- (1) This section applies if—
  - (a) a non-UK resident carries on (alone or in partnership) any trade, profession or vocation through a branch or agency in the United Kingdom, and
  - (b) the branch or agency is to be treated under Chapter 2B of Part 14 of ITA 2007 as the UK representative of the non-UK resident in relation to amounts within section 835E(2) of that Act.
- (2) The branch or agency is the UK representative of the non-UK resident in relation to amounts which, by reference to the branch or agency, are chargeable to capital gains tax under section 10 above.
- (3) The following rules are to be applied for the purposes of subsection (2) and Chapter 2 in relation to an amount within that subsection.
 

*Rule 1* The UK representative continues to be the UK representative of the non-UK resident in relation to the amount even after ceasing to be a branch or agency through which the non-UK resident carries on the trade, profession or vocation concerned.

*Rule 2* The UK representative is treated in relation to the amount as a distinct and separate person from the non-UK resident (if the representative would not otherwise be so treated).

*Rule 3* If the branch or agency is carried on by persons in partnership, the partnership, as such, is treated in relation to the amount as the UK representative of the non-UK resident.
- (4) For further rules that apply where a trade or profession carried on by a non-UK resident in the United Kingdom is carried on in partnership, see section 271C.”

26           After section 271B insert—

#### **“271C Trade or profession carried on in partnership**

- (1) Subsection (2) applies if a trade or profession carried on by a non-UK resident through a branch or agency in the United Kingdom is carried on by the non-UK resident in partnership.
- (2) The trade or profession carried on through the branch or agency is, for the purposes of section 271B and Chapter 2, to be treated as including the notional trade or profession.
- (3) Subsection (4) applies (in addition to subsection (2) if that subsection also applies) if—
  - (a) a trade or profession carried on by a non-UK resident in the United Kingdom is carried on by the non-UK resident in partnership, and
  - (b) any member of the partnership is resident in the United Kingdom.

*Status: Point in time view as at 31/12/2012.*

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(4) The notional trade or profession is, for the purposes of section 271B and Chapter 2, to be treated as being a trade carried on in the United Kingdom through the partnership as such.

(5) In this section “the notional trade or profession” means the notional trade from which the non-UK resident's share in the partnership's profits or losses is treated for the purposes of section 852 of ITTOIA 2005 as deriving.”

27 After section 271C insert—

#### “271D Interpretation of Chapter

In this Chapter—

“branch or agency” means any factorship, agency, receivership, branch or management, and

“non-UK resident” means a person who is not resident in the United Kingdom.”

28 After section 271D insert—

### “CHAPTER 2

#### CAPITAL GAINS TAX OBLIGATIONS AND LIABILITIES IMPOSED ON UK REPRESENTATIVES

#### 271E Introduction to Chapter

(1) This Chapter applies to the enactments contained in—

(a) this Act,

(b) the Tax Acts, and

(c) subordinate legislation made under this Act or the Tax Acts,

so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax.

(2) Those enactments have effect in accordance with section 271F in relation to amounts in respect of which a branch or agency is to be treated as the UK representative of a non-UK resident under Chapter 1.

(3) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”

29 After section 271E insert—

#### “271F Obligations and liabilities of UK representative

(1) The obligations and liabilities of a non-UK resident are to be treated, for the purposes of the enactments to which this Chapter applies, as if they were also the obligations and liabilities of the UK representative of the non-UK resident.

(2) Subsection (3) applies if—

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

- (a) the UK representative of a non-UK resident discharges an obligation or liability imposed by this section that corresponds to one to which the non-UK resident is subject, or
  - (b) a non-UK resident discharges an obligation or liability that corresponds to one to which the non-UK resident's UK representative is subject by virtue of this section.
- (3) The corresponding obligation or liability—
- (a) of the non-UK resident (in a case within subsection (2)(a)), or
  - (b) of the UK representative (in a case within subsection (2)(b)),
- is discharged.
- (4) A non-UK resident is bound, as if they were the non-UK resident's own, by acts or omissions of the non-UK resident's UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (5) This section is subject to sections 271G and 271H.”

30 After section 271F insert—

**“271G Exceptions: notices and information**

- (1) An obligation or liability attaching to a non-UK resident (“X”) by reason of a notice or other document having been given or served on X does not also attach to the UK representative of X by virtue of section 271F unless the notice or other document (or a copy of it) has been given to or served on the representative.
- (2) An obligation or liability attaching to X by reason of a request or demand having been received by X does not also attach to the UK representative of X by virtue of section 271F unless the representative has been notified of the request or demand.
- (3) Subsection (4) applies to obligations relating to the provision of information that are imposed on the UK representative of X by section 271F in a case where the representative is X's independent agent.
- (4) The obligations do not require the UK representative to do anything except so far as it is practicable for the representative to do so.
- (5) For this purpose, the representative must act to the best of the representative's knowledge and belief after taking all reasonable steps to obtain the necessary information.
- (6) An obligation of X to provide information is not discharged by virtue of section 271F in a case where the UK representative of X has discharged the obligation only so far as required by subsection (4) of this section.
- (7) X is not bound by virtue of section 271F by mistakes in information provided by the UK representative of X in discharging, so far as required under subsection (4) of this section, an obligation imposed on the representative by section 271F unless—
  - (a) the mistake is the result of an act or omission of X, or
  - (b) the mistake is one to which X consented or in which X connived.



*Status: Point in time view as at 31/12/2012.*

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- (8) In this section “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Commissioners for Her Majesty's Revenue and Customs or to any officer of Revenue and Customs.”

31 After section 271G insert—

**“271H Exceptions: criminal offences and penalties etc**

- (1) A person is not by virtue of section 271F liable to be proceeded against for a criminal offence unless the person—
- (a) committed the offence, or
  - (b) consented to or connived in its commission.
- (2) An independent agent of a non-UK resident is not by virtue of section 271F liable to any civil penalty or surcharge in respect of an act or omission if conditions A and B are met.
- (3) Condition A is that the act or omission is not—
- (a) an act or omission of the independent agent, or
  - (b) an act or omission to which the agent consented or in which the agent connived.
- (4) Condition B is that the independent agent is able to show that the amount of the penalty or surcharge will not be recoverable out of the sums mentioned in section 271I(3) (after being indemnified for any other liabilities under section 271I).”

32 After section 271H insert—

**“271I Indemnities**

- (1) An independent agent of a non-UK resident is entitled to be indemnified for the amount of any liability of the non-UK resident which the agent has discharged by virtue of section 271F.
- (2) An independent agent of a non-UK resident is entitled to retain, from the sums mentioned in subsection (3), amounts sufficient to meet any liabilities which by virtue of section 271F the agent has discharged or to which the agent is subject.
- (3) The sums are those which—
- (a) (ignoring subsection (2)) are due from the independent agent to the non-UK resident, or
  - (b) are received by the independent agent on behalf of the non-UK resident.”

33 After section 271I insert—

**“271J Meaning of “non-UK resident” and “independent agent”**

- (1) In this Chapter “non-UK resident” means a person who is not resident in the United Kingdom.

*Status: Point in time view as at 31/12/2012.*

**Changes to legislation:** *Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)*

- (2) In this Chapter “independent agent”, in relation to a non-UK resident (“X”), means a person who is the UK representative of X in respect of any agency in which the person is acting on behalf of X in an independent capacity.
- (3) For this purpose a person does not act in an independent capacity on behalf of X unless the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.”

## SCHEDULE 7

Section 371

### MISCELLANEOUS RELOCATIONS

#### PART 1

#### RELOCATION OF SECTION 38 OF, AND SCHEDULE 15 TO, FA 1973

##### *Taxes Management Act 1970 (c. 9)*

- 1 TMA 1970 is amended as follows.
- 2 After Part 7 insert—

#### “PART 7A

#### HOLDERS OF LICENCES UNDER THE PETROLEUM ACT 1998

##### *Licence-holders' liabilities for tax assessed on non-UK residents*

#### **Pre-conditions for serving secondary-liability notice**

- 77B (1) Conditions A to E are the pre-conditions for the purposes of section 77C.
- (2) Condition A is that tax is assessed on a person not resident in the United Kingdom.
- (3) Condition B is that the tax is assessed in reliance on—
- (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that—
- (a) there is a licence to which the tax assessed is related (see section 77J for the meaning of tax related to a licence),
  - (b) there is more than one licence to which the tax assessed is related, or

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- (c) there is a licence, or more than one licence, to which part of the tax assessed is related but in addition part of the tax assessed is not related to any licence.
- (6) Condition E is that the tax is not paid in full within 30 days after it becomes due and payable.
- (7) In this Part “licence” means a licence under Part 1 of the Petroleum Act 1998.

### **Secondary-liability notices**

- 77C (1) If each of the pre-conditions (see section 77B) is met, an officer of Revenue and Customs may serve on the holder of the licence concerned, or on the holder of any of the licences concerned, a notice—
- (a) that states particulars of the assessment,
  - (b) that states the amount remaining unpaid and the date when it became payable,
  - (c) that requires the holder to pay, within 30 days of the service of the notice, the amount for which the holder is liable, and
  - (d) that, if the amount for which the holder is liable is given by subsection (3) or section 77G(7), gives particulars of how the amount was determined.
- (2) For the purposes of subsection (1), the amount for which the holder is liable is the amount remaining unpaid, together with any interest on it under sections 86 and 87A, but this is subject to subsection (3) and section 77G(7).
- (3) In a case within section 77B(5)(b) or (c), the amount for which the holder of the licence is liable is given by—

$$\frac{16 - N}{15}$$

- (4) In subsection (3)—
- A is the amount remaining unpaid,
  - I is any interest due on that amount under sections 86 and 87A,
  - T is the total amount of the profits or chargeable gains in respect of which the assessment is made, and
  - L is so much of that total amount as is profits or chargeable gains related to the licence.
- (5) The power under subsection (1) is subject to section 77E (certain pre-1974 cases).
- (6) In this Part “secondary-liability notice” means a notice under subsection (1).

### **Payments under secondary-liability notices**

- 77D(1) Any amount which a person is required to pay by a secondary-liability notice may be recovered from the person as if it were tax due and duly demanded from the person.

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- (2) If a person (“H”) pays any amount which a secondary-liability notice requires H to pay, H may recover the amount from the person on whom the assessment concerned was made.
- (3) A payment in pursuance of a secondary-liability notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

### **Exception for certain pre-1974 cases**

77E (1) Section 77C(1) does not give power to serve a secondary-liability notice on the holder of a licence if the profits arose, or the chargeable gains accrued, to the assessed person in consequence of a contract made by the holder before 23 March 1973.

- (2) The exception under subsection (1) does not apply if—
  - (a) the assessed person is connected with the holder, or
  - (b) the contract was substantially varied on or after 23 March 1973.
- (3) For the purposes of subsection (2), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.”

3 After section 77E insert—

#### *“Exemption certificates*

### **77F Issue, cancellation and effect of exemption certificates**

- (1) This section applies if there is a person (“T”) who will or might become liable to tax which, if unpaid, could be recovered under this Part from a person (“H”) who is the holder of a licence.
- (2) If an officer of Revenue and Customs, on an application made by T, is satisfied that T will comply with any obligations imposed on T by the Taxes Acts, the officer may issue to H a certificate exempting H from section 77C with respect to any tax payable by T.
- (3) If a certificate is issued to H under subsection (2), an officer of Revenue and Customs may, by notice in writing to H, cancel the certificate from the date specified in the notice.
- (4) The date specified in a notice under subsection (3) may not be earlier than 30 days after the service of the notice.
- (5) If a certificate is issued to H under subsection (2), section 77C does not apply to any tax payable by T which becomes due while the certificate is in force.
- (6) If a certificate is issued to H under subsection (2) but is subsequently cancelled under subsection (3), section 77C also does not apply to any tax payable by T which—
  - (a) becomes due after the certificate is cancelled, but
  - (b) is in respect of profits arising, or chargeable gains accruing, while the certificate is in force.

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### **77G Liabilities for assessments made after exemption certificate cancelled**

- (1) Subsection (7) applies if—
- (a) each of conditions A to C is met, and
  - (b) one of conditions D and E is met.
- (2) Condition A is that, after the cancellation under section 77F(3) of a certificate issued under section 77F(2) to a person (“H”) who is the holder of a licence, tax related to the licence is assessed on the applicant for the certificate.
- (3) Condition B is that the tax is assessed in reliance on—
- (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that—
- (a) ignoring section 77F, H could be required by a secondary-liability notice to pay all of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains in respect of which the assessment is made include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (6) Condition E is that—
- (a) as a result of section 77C(3), but ignoring section 77F, H could be required by a secondary-liability notice to pay some, but not all, of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains that are—
    - (i) ones in respect of which the assessment is made, and
    - (ii) related to the licence,include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (7) If this subsection applies then, for the purposes of section 77C(1), the amount for which the holder of the licence is liable is the amount given by—

$$A \times \left( 1 - \frac{CIF}{CIF + NIF} \right)$$

together with a corresponding proportion of any interest due under sections 86 and 87A on the amount remaining unpaid.

- (8) In subsection (7)—

A is the amount that H could be required to pay as mentioned in paragraph (a) of whichever of conditions D and E is met (“the operative condition”),

CIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is in force, and

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NIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is not in force.”

4 After section 77G insert—

*“Supplementary*

#### **77H Calculations under sections 77C(3) and 77G(7)**

- (1) Subsection (2) applies for the purposes of calculating any of the following amounts of profits or chargeable gains—
  - (a) L in a calculation under section 77C(3),
  - (b) CIF in a calculation under section 77G(7), and
  - (c) CIF + NIF in a calculation under section 77G(7) when it is condition E in section 77G that is met.
- (2) The amount is to be calculated as if for the purposes of making a separate assessment in respect of those profits or chargeable gains on the person on whom the assessment was made.
- (3) An officer of Revenue and Customs applying subsection (2) is to make all such allocations and apportionments of receipts, expenses, allowances and deductions taken into account, or made, for the purposes of the actual assessment as appear to the officer to be just and reasonable in the circumstances.

#### **77I Information**

- (1) The holder of a licence must, if required to do so by a notice served on the holder by an officer of Revenue and Customs, give to the officer within the time specified by the notice (which is not to be less than 30 days) such particulars as may be required by the notice of—
  - (a) licence-related transactions (see subsection (2)),
  - (b) licence-related payments (see subsection (3)), or
  - (c) persons to whom licence-related payments have been paid or are payable.
- (2) In subsection (1) “licence-related transaction” means a transaction in connection with activities authorised by the licence as a result of which any person is or might be liable to tax by virtue of—
  - (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (3) In subsection (1) “licence-related payment” means—
  - (a) earnings which constitute employment income (see section 7(2)(a) of ITEPA 2003),
  - (b) amounts which are treated as earnings and constitute employment income (see section 7(2)(b) of ITEPA 2003), or
  - (c) other payments,

*Status: Point in time view as at 31/12/2012.*

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paid or payable in respect of duties or services performed in an area in which activities authorised by the licence may be carried on under the licence.

- (4) If a notice under subsection (1) is served on the holder of a licence, the holder must take reasonable steps to obtain the information necessary to enable the holder to comply with the notice.

### **77J Meaning of “related to a licence” as respects tax, or profits or gains**

- (1) Subsections (2) and (3) apply for the purposes of this Part.
- (2) An amount of tax is related to a licence if the tax is in respect of profits or chargeable gains related to the licence.
- (3) Profits or chargeable gains are related to a licence if they are—
- (a) profits from activities authorised by the licence,
  - (b) profits from activities carried on in connection with activities authorised by the licence, or
  - (c) profits from, or chargeable gains accruing on the disposal of, exploration or exploitation rights connected with—
    - (i) activities authorised by the licence, or
    - (ii) activities carried on in connection with activities authorised by the licence.
- (4) In this section—
- (a) “designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,
  - (b) “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area,
  - (c) “exploration or exploitation rights” means rights to—
    - (i) assets to be produced by exploration or exploitation activities,
    - (ii) interests in such assets, or
    - (iii) the benefit of such assets,
  - (d) any reference to the disposal of exploration or exploitation rights includes a reference to the disposal of unlisted shares deriving their value, or the greater part of their value, directly or indirectly from such rights,
  - (e) “shares” includes—
    - (i) stock, and
    - (ii) securities not creating or evidencing a charge on assets,
  - (f) “unlisted shares” means shares that are not listed on a recognised stock exchange, and
  - (g) “recognised stock exchange” has the meaning given by section 1005(1) and (2) of ITA 2007.

### **77K Other definitions in Part 7A**

- (1) This section applies for the purposes of this Part.

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(2) “Licence” has the meaning given by section 77B(7).

(3) “Secondary-liability notice” has the meaning given by section 77C(6).”

5 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for paragraph 2 of Schedule 15 to FA 1973.

(3) After the entry for regulations under section 59E of TMA 1970 insert—

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“Section 77I(1) of this Act.”

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*Finance Act 1973 (c. 51)*

6 FA 1973 is amended as follows.

7 Omit section 38 (which introduces and interprets Schedule 15).

8 Omit Schedule 15 (territorial extension of charge to tax: supplementary provisions).

*Oil Taxation Act 1975 (c. 22)*

9 The Oil Taxation Act 1975 is amended as follows.

10 In section 3(4) (expenditure not allowable under the section) for paragraph (f) (which refers to notices under paragraph 4 of Schedule 15 to FA 1973), and the “or” preceding it, substitute “or

(f) any payment made in pursuance of a notice under section 77C of the Taxes Management Act 1970 (notice requiring licence-holder to pay unpaid tax assessed on non-UK resident);”.

**PART 2**

RELOCATION OF SECTION 24 OF FA 1974

*Taxes Management Act 1970 (c. 9)*

11 TMA 1970 is amended as follows.

12 In section 8 (personal return) after subsection (4) insert—

“(4A) Subsection (4B) applies if a notice under this section is given to a person within section 8ZA of this Act (certain persons employed etc by person not resident in United Kingdom who perform their duties for UK clients).

(4B) The notice may require a return of the person's income to include particulars of any general earnings (see section 7(3) of ITEPA 2003) paid to the person.”

13 After section 8 insert—

**“8ZA Interpretation of section 8(4A)**

(1) For the purposes of section 8(4A) of this Act, a person (“F”) is within this section if each of conditions A to C is met.



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- (2) Condition A is that F performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.
- (3) Condition B is that the office or employment is under or with a person who—
  - (a) is not resident in the United Kingdom, but
  - (b) is resident outside the United Kingdom.
- (4) Condition C is that the duties are performed for the benefit of a person who—
  - (a) is resident in the United Kingdom, or
  - (b) carries on a trade, profession or vocation in the United Kingdom.”

14 After section 15 insert—

**“15A Non-resident's staff are UK client's employees for section 15 purposes**

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person (“F”) performs in the United Kingdom, for a continuous period of 30 days or more, duties of an office or employment.
- (3) Condition B is that the office or employment is under or with a person who—
  - (a) is not resident in the United Kingdom, but
  - (b) is resident outside the United Kingdom.
- (4) Condition C is that the duties are performed for the benefit of a person (“P”) who—
  - (a) is resident in the United Kingdom, or
  - (b) carries on a trade, profession or vocation in the United Kingdom.
- (5) Section 15 of this Act applies as if P were F's employer, but only so as to enable P to be required to make a return of F's name and place of residence.”

*Finance Act 1974 (c. 30)*

15 FA 1974 is amended as follows.

16 Omit section 24 (returns of persons treated as employees).

**PART 3**

**RELOCATION OF SECTION 42 OF ICTA**

*Taxes Management Act 1970 (c. 9)*

17 TMA 1970 is amended as follows.

- 18 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.
  - (2) Omit the entry for section 42 of ICTA.
  - (3) Before the entry for section 647 of ITTOIA 2005 insert—

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“Section 302B of ITTOIA 2005.”

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*Income and Corporation Taxes Act 1988 (c. 1)*

- 19 ICTA is amended as follows.  
20 Omit section 42 (appeals against determinations under Chapter 4 of Part 3 of ITTOIA 2005).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 21 ITTOIA 2005 is amended as follows.  
22 After section 302 insert—

*“Determinations affecting liability of more than one person*

**302A Appeals against proposed determinations**

- (1) Subsection (2) applies if it appears to an officer of Revenue and Customs that—
  - (a) a determination is needed of an amount that is to be brought into account as a receipt under this Chapter in calculating the liability to tax of a person (“the first taxpayer”), and
  - (b) the determination may affect the liability to income tax, corporation tax or capital gains tax of other persons.
- (2) The officer may give notice (a “provisional notice of determination”) to the first taxpayer and the other persons of—
  - (a) the determination the officer proposes to make, and
  - (b) their rights under this section and section 302C.
- (3) A person to whom a provisional notice of determination is given may object to the proposed determination by giving notice (a “notice of objection”) to the officer.
- (4) The notice of objection must be given within 30 days of the date on which the provisional notice of determination was given.
- (5) If an officer gives provisional notices of determination and no person gives a notice of objection—
  - (a) a determination must be made by the officer as proposed in the provisional notices, and
  - (b) the determination is not to be called in question in any proceedings.

**302B Section 302A: supplementary**

- (1) A provisional notice of determination under section 302A(2) may include a statement of the grounds on which the officer proposes to make the determination.
- (2) Subsection (1) applies despite any obligation as to secrecy or other restriction on the disclosure of information.
- (3) An officer of Revenue and Customs may by notice (“a preliminary notice”) require any person to give any information that appears to the officer to

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be needed for deciding whether to give any person a provisional notice of determination under section 302A(2).

- (4) The preliminary notice must state the time within which the information is to be given.

### **302C Determination by tribunal**

- (1) If a notice of objection is given under section 302A(3), the amount mentioned in section 302A(1) must be determined in the same way as an appeal.
- (2) All persons to whom provisional notices of determination have been given under section 302A(2) may be a party to—
- (a) any proceedings under subsection (1), and
  - (b) any appeal arising out of those proceedings.
- (3) Those persons are bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings.
- (4) Their successors in title are bound in the same way.”

#### *Corporation Tax Act 2009 (c. 4)*

23 CTA 2009 is amended as follows.

- 24 In section 242(2) (determination by tribunal) for the words from “take part” to the end substitute “be a party to—
- (a) any proceedings under subsection (1), and
  - (b) any appeal arising out of those proceedings.”

## **PART 4**

### RELOCATION OF SECTION 84A OF ICTA

#### *Income and Corporation Taxes Act 1988 (c. 1)*

25 ICTA is amended as follows.

- 26 Omit section 84A (costs of establishing share option or profit sharing scheme: relief).

#### *Income Tax (Trading and Other Income) Act 2005 (c. 5)*

27 ITTOIA 2005 is amended as follows.

28 In Chapter 5 of Part 2, after section 94 insert—

*“SAYE option schemes, CSOP schemes*

### **94A Costs of setting up SAYE option scheme or CSOP scheme**

- (1) This section applies if—

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- (a) a company incurs expenses in setting up a scheme within subsection (2) that is approved by an officer of Revenue and Customs, and
- (b) no employee or director acquires rights under the scheme before it is approved.

(2) The schemes within this subsection are—

- (a) SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and
- (b) CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

The references in subsection (1) to a scheme being approved are to it being approved under Schedule 3 or 4 to ITEPA 2003 (as the case may be).

- (3) A deduction for the expenses is to be made in calculating the profits of a trade carried on by the company.
- (4) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred, for the purposes of subsection (3) the deduction is to be made for the period of account in which the approval is given.”

29 In section 272(2) (profits of property business: application of trading income rules) at the appropriate place insert—

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“section 94A                      costs of setting up SAYE option scheme or CSOP scheme”.

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## PART 5

### RELOCATION OF SECTION 152 OF ICTA

#### *Taxes Management Act 1970 (c. 9)*

30 TMA 1970 is amended as follows.

- 31 (1) Amend section 48 (application of following provisions of Part 5) as follows.
- (2) In subsection (2)(a) (application to appeals other than appeals against assessments) for “section 56” substitute “ sections 54A to 54C and 56 ”.
  - (3) In subsection (3) (meaning of “relevant provisions” for purpose of application to proceedings other than appeals) after “except sections 49A to 49I” insert “ and 54A to 54C ”.

32 After section 54 insert—

#### “54A No questioning in appeal of amounts of certain social security income

- (1) Subsection (2) applies if an amount is notified under section 54B(1) and—
  - (a) no objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5), or
  - (b) an objection is made but is withdrawn by the objector by notice.

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- (2) The amount is not to be questioned in any appeal against any assessment in respect of income including the amount.
- (3) Subsection (4) applies if an amount is notified under section 54B(1) and—
  - (a) an objection is made to the notification within 60 days after its date of issue, or such further period as may be allowed under section 54B(4) and (5),
  - (b) the appropriate officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and
  - (c) the officer confirms that agreement in writing.
- (4) The amount, as varied, is not to be questioned in any appeal against any assessment in respect of income including that amount.
- (5) Subsection (4) does not apply if, within 60 days from the date when the agreement was come to, the objector gives to the appropriate officer notice that the objector wishes to repudiate or resile from the agreement.

#### **54B Notifications of taxable amounts of certain social security income**

- (1) The appropriate officer may by notice notify a person who is liable to pay any income tax charged on any unemployment benefit, jobseeker's allowance or income support—
  - (a) of the amount on which the tax is charged, or
  - (b) of an alteration in an amount previously notified under paragraph (a) or this paragraph.
- (2) A notification under subsection (1) must—
  - (a) state its date of issue, and
  - (b) state that the person notified may object to the notification by notice given within 60 days after that date.
- (3) A notification under subsection (1)(b) cancels the previous notification concerned.
- (4) An objection to a notification under subsection (1) may be made later than 60 days after its date of issue if, on an application for the purpose—
  - (a) the appropriate officer is satisfied—
    - (i) that there was a reasonable excuse for not objecting before the end of the 60 days, and
    - (ii) that the application was made without unreasonable delay after the end of the 60 days, and
  - (b) the officer gives consent in writing.
- (5) If the officer is not so satisfied, the officer is to refer the application for determination by the tribunal.

#### **54C Interpretation of sections 54A and 54B: “appropriate officer” etc**

- (1) In sections 54A and 54B “the appropriate officer” means the appropriate officer—
  - (a) in Great Britain, of the Department for Work and Pensions, and

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(b) in Northern Ireland, of the Department for Social Development.

(2) Section 48(1)(a) (meaning of “appeal” in the following provisions of Part 5) does not apply for the purposes of sections 54A and 54B.”

*Income and Corporation Taxes Act 1988 (c. 1)*

33 ICTA is amended as follows.

34 Omit section 152 (notification of taxable amount of certain benefits).

**PART 6**

RELOCATION OF SECTION 337A(2) OF ICTA

*Income and Corporation Taxes Act 1988*

35 ICTA is amended as follows.

36 Omit section 6(5) (signpost to Part 8 of the Act).

37 Omit section 337A(2) (in calculating a company's income, deductions in respect of interest to be made only under Part 5 of CTA 2009).

*Corporation Tax Act 2009 (c. 4)*

38 CTA 2009 is amended as follows.

39 After section 1301 insert—

**“1301A Restriction of deductions for interest**

In calculating a company's income from any source for corporation tax purposes, no deduction is allowed for interest otherwise than under Part 5 (loan relationships).”

**PART 7**

RELOCATION OF SECTION 475 OF ICTA

*Income and Corporation Taxes Act 1988 (c. 1)*

40 ICTA is amended as follows.

41 Omit section 475 (tax-free Treasury securities: exclusion of interest on borrowed money).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

42 ITTOIA 2005 is amended as follows.

43 Before section 155 (before the italic cross-heading) insert—

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### **Certain non-UK residents with interest on 3½% War Loan 1952 Or After**

“154A) This section applies if—

- (a) in any tax year a person who is not ordinarily resident in the United Kingdom carries on a trade there—
    - (i) consisting of banking or insurance, or
    - (ii) consisting wholly or partly of dealing in securities, and
  - (b) in calculating the profits of the trade for the tax year any amount is disregarded as a result of section 714 (exemption of profits from FOTRA securities) because of a condition subject to which any 3½% War Loan 1952 Or After was issued.
- (2) Interest on money borrowed for the purposes of the trade is to be deducted in calculating the profits of the trade of that tax year only so far as it exceeds the ineligible amount.
- (3) The ineligible amount is found as follows—
- Step 1* Add together all sums borrowed for the purposes of the trade and still owing in the basis period for the tax year.
- Step 2* If the person carrying on the trade is a company, deduct any sums carrying interest which is not deducted in calculating the profits of the trade (otherwise than because of subsection (2)).
- Step 3* If the amount found at Step 2 exceeds the total cost of the 3½% War Loan 1952 Or After held for the purposes of the trade in the basis period, deduct the excess from that amount.
- Step 4* Calculate the average rate of interest in the basis period on money borrowed for the purposes of the trade.
- Step 5* Calculate the amount of interest payable on the amount found at Step 3 at the rate found at Step 4 for the basis period.
- The result is the ineligible amount.
- (4) If the person's holding of 3½% War Loan 1952 Or After has fluctuated during the basis period, the total cost for the purposes of Step 3 is taken to be—

$$C \times \frac{AH}{TH}$$

where—

C is the cost of acquisition of the initial holding (if any) and any holdings acquired during the basis period,  
AH is the average holding in that period, and  
TH is the total of the initial holding (if any) and any holdings acquired during the basis period.

- (5) In subsection (4) “initial holding” means the holding held by the person at the beginning of the basis period.”

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## PART 8

### RELOCATION OF SECTION 700 OF ICTA

#### *Income and Corporation Taxes Act 1988 (c. 1)*

44 ICTA is amended as follows.

45 Omit section 700 (adjustments and information).

#### *Income Tax (Trading and Other Income) Act 2005 (c. 5)*

46 ITTOIA 2005 is amended as follows.

47 After section 682 (assessments, adjustments and claims after the administration period) insert—

#### **“682A Statements relating to estate income**

- (1) If a person within subsection (2) requests it in writing, a personal representative of a deceased person must provide the person with a statement showing—
  - (a) the amount treated as estate income arising from the person's interest in the whole or part of the deceased person's estate for which the person is liable to income tax for a tax year, and
  - (b) the amount of any tax at the applicable rate which any such amount is treated as having borne.
- (2) A person is within this subsection if—
  - (a) the person has or has had an absolute or limited interest in the whole or part of the residue of the estate, or
  - (b) estate income has arisen to the person from a discretionary interest the person has or has had in the whole or part of the residue of the estate.
- (3) A statement under subsection (1) must be in writing.
- (4) The duty to comply with a request under this section is enforceable by the person who made it.”

## PART 9

### RELOCATION OF SECTION 787 OF ICTA

#### *Income and Corporation Taxes Act 1988 (c. 1)*

48 ICTA is amended as follows.

49 Omit section 787 (restriction of relief for payments of interest).

#### *Income Tax Act 2007 (c. 3)*

50 ITA 2007 is amended as follows.



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- 51 In section 2(13) (overview of Part 13) after paragraph (h) (which is inserted by Schedule 8) insert—
- “(i) leases of plant and machinery (Chapter 6), and
  - (j) tax relief for interest (Chapter 7).”
- 52 After section 809ZF (which is inserted by CTA 2010) insert—

## “CHAPTER 7

### AVOIDANCE INVOLVING OBTAINING TAX RELIEF FOR INTEREST

#### **809ZG Tax relief schemes and arrangements**

- (1) Relief is not to be given under any provision of the Income Tax Acts to a person in respect of a payment of interest if a tax relief scheme has been effected, or tax relief arrangements have been made, in relation to the transaction under which the interest is paid.
- (2) Subsection (1) applies whether the tax relief scheme is effected, or the tax relief arrangements are made, before or after the transaction.
- (3) A scheme is a tax relief scheme in relation to a transaction for the purposes of subsection (1) if it is such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.
- (4) Arrangements are tax relief arrangements in relation to a transaction for the purposes of subsection (1) if they are such that the sole or main benefit that might be expected to accrue to the person from the transaction is the obtaining of a reduction in tax liability by means of relief under the Income Tax Acts.
- (5) In this section “relief” means relief by way of—
  - (a) deduction in calculating profits or gains, or
  - (b) deduction or set off against income.”

## PART 10

### RELOCATION OF SECTIONS 130 TO 132 OF FA 1988

*Taxes Management Act 1970 (c. 9)*

- 53 TMA 1970 is amended as follows.
- 54 After section 109A insert—

*“Companies ceasing to be UK resident*

#### **109B Provisions for securing payment by company of outstanding tax**

- (1) Each of conditions A to D must be met before a company ceases to be resident in the United Kingdom.

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- (2) Condition A is that the company gives to the Commissioners for Her Majesty's Revenue and Customs notice of its intention to cease to be resident in the United Kingdom.
- (3) Condition B is that the notice specifies the time (“the migration time”) when the company intends to cease to be resident in the United Kingdom.
- (4) Condition C is that the company gives to the Commissioners—
  - (a) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
  - (b) particulars of the arrangements which it proposes to make for securing the payment of that tax.
- (5) Condition D is that—
  - (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
  - (b) those arrangements, as made by the company, are approved for the purposes of this subsection by the Commissioners.
- (6) If any question arises as to the amount which, for the purposes of subsection (5), should be regarded as the amount of tax which is or will be payable by the company in respect of periods beginning before the migration time, that question is to be referred to the tribunal.
- (7) A decision of the tribunal under subsection (6) is final, despite sections 11 and 13 of the TCEA 2007 (appeals from tribunal decisions).
- (8) If any information furnished by the company for the purpose of securing the Commissioners' approval under subsection (5) does not fully and accurately disclose all facts and considerations material for the Commissioners' decision under that subsection, any resulting approval is void.

#### **109C Penalty for company's failure to comply with section 109B**

If a company ceases to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met, the company is liable to a penalty not exceeding the amount of tax—

- (a) which is or will be payable by it in respect of periods beginning before that time, and
- (b) which has not been paid at that time.

#### **109D Penalty for other persons if company fails to comply with section 109B**

- (1) Subsection (5) applies if—
  - (a) condition E is met, and
  - (b) either of conditions F and G is met.
- (2) Condition E is that in relation to a company (“the migrating company”) any person (“P”) does or is party to the doing of any act which to P's knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company

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ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.

- (3) Condition F is that P is—
  - (a) a director of the migrating company,
  - (b) a company which has control of the migrating company, or
  - (c) a director of a company which has control of the migrating company.
- (4) Condition G is that the act mentioned in subsection (2) is a direction or instruction given—
  - (a) to persons within subsection (3), but
  - (b) otherwise than by way of advice given by a person acting in a professional capacity.
- (5) If this subsection applies, P is liable to a penalty not exceeding the amount of tax—
  - (a) which is or will be payable by the migrating company in respect of periods beginning before the time mentioned in subsection (2), and
  - (b) which has not been paid at that time.
- (6) Subsections (7) and (8) apply for the purposes of any proceedings against a person within subsection (3) for the recovery of a penalty under subsection (5).
- (7) It is to be presumed that the person was party to every act of the migrating company unless the person proves that it was done without the person's consent or connivance.
- (8) It is to be presumed, unless the contrary is proved, that any early-migration act was to the person's knowledge an early-migration act.
- (9) In subsection (8) “early-migration act” means an act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.

### **109E Liability of other persons for unpaid tax**

- (1) This section applies if—
  - (a) a company (“the migrating company”) ceases to be resident in the United Kingdom at any time, and
  - (b) any tax which is payable by the company in respect of periods beginning before that time is not paid within 6 months from the time when it becomes payable.
- (2) The Commissioners for Her Majesty's Revenue and Customs may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person within subsection (3) a notice—
  - (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable, and
  - (b) requiring that person to pay that amount within 30 days of the service of the notice.

*Status: Point in time view as at 31/12/2012.*

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- (3) The persons within this subsection are—
- (a) any company which is, or within the pre-migration year was, a member of the same group as the migrating company,
  - (b) any person who is, or within the pre-migration year was, a controlling director of the migrating company, and
  - (c) any person who is, or within the pre-migration year was, a controlling director of a company which has, or within the pre-migration year had, control over the migrating company.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due and duly demanded from the person.
- (5) If a person (“P”) pays any amount which a notice under this section requires P to pay, P may recover the amount from the migrating company.
- (6) A payment in pursuance of a notice under this section is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.
- (7) In this section—
- “controlling director”, in relation to a company, means a director of the company who has control of the company,
- “group” has the meaning which would be given by section 170 of the 1992 Act if in that section for references to 75 per cent subsidiaries there were substituted references to 51 per cent subsidiaries, and
- “pre-migration year” means the period of 12 months ending with the time when the migrating company ceases to be resident in the United Kingdom.

### **109F Interpretation of sections 109B to 109E**

- (1) In sections 109B to 109E, any reference to the tax payable by a company includes a reference to—
- (a) any amount which the company is liable to pay under section 77C (territorial extension of charge to tax),
  - (b) any amount of tax which the company is liable to pay under regulations made under section 684 of ITEPA 2003 (PAYE),
  - (c) any amount which the company is liable to pay under sections 61 and 62(1)(a) of the Finance Act 2004 (sub-contractors in the construction industry),
  - (d) any income tax which the company is liable to pay in respect of payments within section 946 of ITA 2007 (collection of tax: deposit-takers, building societies and certain companies), and
  - (e) any amount representing income tax which the company is liable to pay under section 966 of ITA 2007 (entertainers and sportsmen).
- (2) In sections 109B to 109E read in accordance with subsection (1), any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest—
- (a) on the tax so payable, or
  - (b) on tax paid by the company in respect of such periods,

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which the company is liable to pay in respect of periods beginning before or after that time.

- (3) In sections 109B to 109E “director”, in relation to a company, is to be read in accordance with the following provisions—
- (a) section 67(1) and (2) of ITEPA 2003, and
  - (b) section 452 of CTA 2010.
- (4) In sections 109B to 109E, any reference to a person having control of a company is to be read in accordance with sections 450 and 451 of CTA 2010.”

*Finance Act 1988 (c. 39)*

55 FA 1988 is amended as follows.

56 Omit sections 130 to 132 (company migration).

**PART 11**

RELOCATION OF SECTION 151 OF FA 1989

*Taxes Management Act 1970 (c. 9)*

57 TMA 1970 is amended as follows.

58 After section 30A insert—

**“30AA Assessing income tax on trustees and personal representatives**

- (1) Income tax charged on income arising to trustees of a settlement may be assessed and charged on, and in the name of, any one or more of the assessable trustees.
- (2) Income tax charged on income arising to the personal representatives of a deceased person may be assessed and charged on, and in the name of, any one or more of the assessable representatives.
- (3) In subsection (1) “the assessable trustees” means—
- (a) the trustees of the settlement in the tax year in which the income arises, and
  - (b) any subsequent trustees of the settlement.
- (4) In subsection (2) “the assessable representatives” means—
- (a) the persons who, in the tax year in which the income arises, are personal representatives of the deceased person, and
  - (b) any subsequent personal representatives of the deceased person.”

*Finance Act 1989 (c. 26)*

59 FA 1989 is amended as follows.

60 Omit section 151 (assessment of trustees and personal representatives).

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*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 61 ITTOIA 2005 is amended as follows.
- 62 In Schedule 2 (transitionals and savings etc) omit paragraph 91 (interpretation of section 151(2) of FA 1989).

**PART 12**

RELOCATION OF SCHEDULE 12 TO F(No.2)A 1992  
SO FAR AS APPLYING FOR INCOME TAX PURPOSES

*Finance (No.2) Act 1992 (c. 48)*

- 63 F(No.2)A 1992 is amended as follows.
- 64 Omit section 66 (which introduces Schedule 12).
- 65 Omit Schedule 12 (banks etc in compulsory liquidation).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 66 ITTOIA 2005 is amended as follows.
- 67 In section 369 (charge to tax on interest) after subsection (4) insert—
- “(5) See also Chapter 3A of Part 14 of ITA 2007 (which provides for the receipts of certain types of company being wound up to be charged to income tax under that Chapter instead of under any other provision that would otherwise apply).”

*Income Tax Act 2007 (c. 3)*

- 68 ITA 2007 is amended as follows.
- 69 In section 2(14) (overview of Act: Part 14) after paragraph (c) insert “, and  
(d) imposition of the charge to income tax on the receipts of certain types of company being wound up (Chapter 3A).”
- 70 In section 3(2) (overview of charges to income tax)—
- (a) omit the “and” immediately before paragraph (e), and
- (b) after paragraph (e) insert “, and  
(f) Chapter 3A of Part 14 of this Act (banks etc in compulsory liquidation).”
- 71 After section 837 insert—

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## “CHAPTER 3A

### BANKS ETC IN COMPULSORY LIQUIDATION

#### 837A Overview of Chapter

- (1) This Chapter provides for the receipts of certain types of company being wound up to be charged to income tax.
- (2) For provision charging the receipts of such companies to corporation tax, see Chapter 6 of Part 13 of CTA 2010.

#### 837B Application of Chapter

- (1) This Chapter applies if—
  - (a) a company is being or has been wound up by the court in the United Kingdom, and
  - (b) conditions A, B and C are met.
- (2) Condition A is that the company was, at any time within the period mentioned in subsection (5), lawfully carrying on a business of accepting deposits as—
  - (a) a person of the kind mentioned in paragraph (b) of the definition of “bank” in section 991(2) (persons with permission under Part 4 of FISMA 2000 to accept deposits), or
  - (b) a permitted EEA credit institution.
- (3) Condition B is that the company has permanently ceased to carry on the trade that included the business of accepting deposits (the “deposit-taking trade”).
- (4) Condition C is that the company is insolvent and—
  - (a) was so when the winding up proceedings started, or
  - (b) became so at any time in the period of 12 months following the day on which those proceedings started.
- (5) The period referred to in subsection (2) is the period of 12 months ending with the earlier of—
  - (a) the day on which the winding up proceedings started, and
  - (b) the day on which the company permanently ceased to carry on the deposit-taking trade.
- (6) In subsection (2)(b) a “permitted EEA credit institution” means an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (credit institutions authorised by home state regulator) which has permission to accept deposits under paragraph 15 of that Schedule.

#### 837C Charge to income tax on winding up receipts

- (1) Winding up receipts arising from the deposit-taking trade are chargeable to income tax.

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- (2) Subsection (1) applies in relation to a winding up receipt only so far as its value was not brought into account in calculating the profits of the trade of any period before the permanent cessation of the trade.
- (3) A “winding up receipt” means (subject to subsection (4)) a sum received by the company or its liquidator after—
  - (a) the start of the winding up proceedings, or
  - (b) if later, the permanent cessation of the deposit-taking trade.
- (4) The following are not winding up receipts—
  - (a) a sum received on behalf of a person entitled to the sum to the exclusion of the company and its liquidator, and
  - (b) a sum realised by the transfer of an asset required to be valued under section 173 of ITTOIA 2005 (valuation of trading stock on cessation).

#### **837D Transfer of rights to payment**

- (1) This section applies if—
  - (a) the company or its liquidator transfers for value to another person the right to receive a sum arising from the deposit-taking trade, and
  - (b) the sum is one which, if received by the company or its liquidator, would be a winding up receipt.
- (2) If the transfer is at arm's length, this Chapter has effect as if the amount or value of the consideration for the transfer were a winding up receipt arising from the deposit-taking trade.
- (3) If the transfer is not at arm's length, this Chapter has effect as if the value of the right transferred as between parties at arm's length were a winding up receipt arising from the deposit-taking trade.

#### **837E Allowable deductions**

- (1) In calculating the amount on which income tax is charged under this Chapter for a tax year, deductions are allowed in accordance with this section from the amount which would otherwise be chargeable to income tax under this Chapter.
- (2) A deduction is allowed for the total sum of all losses, expenses and debits within subsection (3) that are incurred during or before the tax year (but subject to subsections (4) and (5)).
- (3) The losses, expenses and debits within this subsection are those which, if the company carrying on the deposit-taking trade had not permanently ceased to do so—
  - (a) would have been deducted in calculating the profits of the trade for income or corporation tax purposes, or
  - (b) would have been deducted from or set off against the profits of the trade for income or corporation tax purposes.
- (4) No deduction is allowed if the loss, expense or debit arises directly or indirectly from the cessation itself.



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- (5) A loss, expense or debit is only within subsection (3) if incurred—
  - (a) after the start of the winding up proceedings or, if later, the permanent cessation of the deposit-taking trade, or
  - (b) in the case of a loss, at or before the permanent cessation of the deposit-taking trade.
- (6) No deduction for an amount is allowed under this section if the amount has already been allowed (whether under this section or under any other provision of the Tax Acts).

### **837F Election to carry back**

- (1) This section applies if a winding up receipt arising from the deposit-taking trade is received in a tax year beginning no later than 6 years after the company permanently ceased to carry on the trade.
- (2) The company or its liquidator may elect that the income tax chargeable under this Chapter in respect of the receipt is to be charged as if the receipt has been received on the date of the cessation.
- (3) The election must be made before the end of the period of two years beginning immediately after the end of the tax year in which the receipt is received.
- (4) If an election is made under this section an assessment to income tax must be made accordingly (regardless of anything in the Income Tax Acts).

### **837G Relationship of Chapter with other income tax provisions**

If a winding up receipt arising from the deposit-taking trade is chargeable to income tax under this Chapter it is not chargeable to income tax under any other provision.

### **837H Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) There is the permanent cessation of a company's trade if—
  - (a) the company ceases to carry on the trade, or
  - (b) the company ceases to be within the charge to corporation tax in respect of the trade,whether or not the trade is in fact ceased.
- (3) A company is insolvent at any time if at that time—
  - (a) it is unable to pay its debts as they fall due, or
  - (b) the value of its assets is less than the amount of its liabilities (including its contingent and prospective liabilities).
- (4) “Company” means—
  - (a) a company as defined in section 1(1) of the Companies Act 2006, or
  - (b) an unregistered company as defined in section 220 of the Insolvency Act 1986 or Article 184 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

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(5) For the meaning of “deposit-taking trade” and “winding up receipt”, see sections 837B(3) and 837C(3) respectively.”

72 In Schedule 4 (index of defined expressions) at the appropriate places insert—

“company (in Chapter 3A of Part 14)	section 837H(4)”
“deposit-taking trade (in Chapter 3A of Part 14)	section 837B(3)”
“winding up receipt (in Chapter 3A of Part 14)	section 837C(3)”

### PART 13

RELOCATION OF SECTION 200 OF FA 1996 SO FAR AS APPLYING FOR INCOME TAX PURPOSES

#### *Finance Act 1996 (c. 8)*

73 FA 1996 is amended as follows.

74 (1) Amend section 200 (domicile for tax purposes of overseas electors) as follows.

(2) In subsection (1)(a) (determinations for purposes of inheritance tax, income tax or capital gains tax) omit “, income tax”.

(3) In subsection (4)(a) (which refers to any of the taxes mentioned in subsection (1)(a)) for “any” substitute “ either ”.

#### *Income Tax Act 2007 (c. 3)*

75 ITA 2007 is amended as follows.

76 In section 2(14)(b) (overview of Act: reference to Chapter 2 of Part 14) for “(Chapter 2)” substitute “ and domicile (Chapters 2 and 2A) ”.

77 After section 835A insert—

### “CHAPTER 2A

#### DOMICILE

#### **835B Domicile for income tax purposes of overseas electors**

(1) In determining for income tax purposes where a person is domiciled, disregard any relevant electoral action taken by the person (whether taken before, on or after the day on which TIOPA 2010 is passed).

(2) For the purposes of this section, relevant electoral action is taken by a person if—

- (a) the person does anything with a view to, or in connection with, being registered as an overseas elector, or
- (b) the person, when registered as an overseas elector, votes in any election at which the person is entitled to vote as a result of being registered as an overseas elector.

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- (3) For the purposes of this section, a person is registered as an overseas elector if the person is—
- (a) registered in any register of parliamentary electors in pursuance of such a declaration as is mentioned in section 1(1)(a) of the Representation of the People Act 1985 (extension of parliamentary franchise to certain non-resident British citizens), or
  - (b) registered under section 3 of that Act (certain non-resident peers entitled to vote at European Parliamentary elections).
- (4) Subsection (1) does not prevent regard being had, in determining a person's domicile at any time, to any relevant electoral action taken by the person if—
- (a) the person's domicile at that time is being determined for the purpose of ascertaining that or any other person's liability to income tax, and
  - (b) the person whose liability is being ascertained wishes regard to be had to that action.
- (5) If a person's domicile is determined in accordance with any such wishes, that domicile is to be regarded as having been determined for the purpose only of ascertaining the liability concerned.”

## PART 14

### RELOCATION OF SECTION 36 OF FA 1998 AND SECTION 111 OF FA 2009

#### *Taxes Management Act 1970 (c. 9)*

- 78 TMA 1970 is amended as follows.  
79 In Part 5A (payment of tax) after section 59E insert—

#### **“59F Arrangements for paying tax on behalf of group members**

- (1) An officer of Revenue and Customs may enter into arrangements for the specified purpose with some or all of the members of a group.
- (2) For the purposes of subsection (1), arrangements entered into with some or all of the members of a group are for “the specified purpose” if they are arrangements for one of those members to discharge any liability of each of those members to pay corporation tax for the accounting periods to which the arrangements relate.
- (3) For the purposes of this section, a company and all its 51% subsidiaries form a group and, if any of those subsidiaries has 51% subsidiaries, the group includes them and their 51% subsidiaries, and so on.
- (4) Arrangements entered into under subsection (1)—
- (a) may make provision in relation to cases where companies become or cease to be members of a group,
  - (b) may make provision in relation to the discharge of liability to pay interest or penalties,
  - (c) may make provision in relation to the discharge of liability to pay any amount within subsection (6),

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- (d) may make provision for or in connection with the termination of the arrangements, and
  - (e) may make such supplementary, incidental, consequential or transitional provision as is necessary for the purposes of the arrangements.
- (5) Arrangements entered into under subsection (1)—
- (a) do not affect the liability to corporation tax, or to pay corporation tax, of any company to which the arrangements relate, and
  - (b) do not affect any other liability under the Tax Acts of any company to which the arrangements relate.
- (6) The following amounts are within this subsection—
- (a) an amount due from a company under section 455 of CTA 2010 (charge to tax in case of loan to participator in close company) as if it were an amount of corporation tax chargeable on the company, and
  - (b) a sum chargeable on a company under section 747(4)(a) of the principal Act (controlled foreign companies) as if it were an amount of corporation tax.”

80 In Part 5A after section 59F insert—

**“59G Managed payment plans**

- (1) This section applies if a person (“P”) has entered into a managed payment plan in respect of—
  - (a) an amount on account of income tax which is to become payable in accordance with section 59A(2),
  - (b) an amount of income tax or capital gains tax which is to become payable in accordance with section 59B, or
  - (c) an amount of corporation tax which is to become payable in accordance with section 59D.
- (2) P enters into a managed payment plan in respect of an amount if—
  - (a) P agrees to pay, and an officer of Revenue and Customs agrees to accept payment of, the amount by way of instalments,
  - (b) the instalments to be paid before the due date are balanced by the instalments to be paid after it (see section 59H), and
  - (c) the agreement meets such other requirements as may be specified in regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (3) But this section does not apply, in the case of an amount of corporation tax, if an arrangement under section 59F has been made in relation to the amount.
- (4) If P pays all of the instalments in accordance with the plan, P is to be treated as having paid, on the due date, the total of those instalments.
- (5) If P—
  - (a) pays one or more instalments in accordance with the plan, but
  - (b) fails to pay one or more later instalments in accordance with it,
 P is to be treated as having paid, on the due date, the total of the instalments paid before the failure (but this is subject to subsection (6)).

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- (6) If—
- (a) subsection (5) applies in a case in which the first failure to pay an instalment occurs before the due date, and
  - (b) P would (in the absence of a managed payment plan) be entitled to be paid interest on any amount paid before that date,
- then, despite that subsection, P is entitled to be paid that interest.
- (7) If—
- (a) subsection (5) applies,
  - (b) P makes one or more payments after the due date (whether or not in accordance with the plan), and
  - (c) an officer of Revenue and Customs gives P a notice specifying any or all of those payments,
- P is not liable to a penalty or surcharge for failing to pay the amount of the specified payments on or before the due date.
- (8) Regulations under this section may make different provision for different cases.
- (9) In this section “the due date”, in relation to an amount mentioned in subsection (1), means the date on which it becomes payable.

#### **59H Balancing of instalments for the purposes of section 59G**

- (1) Subsection (2) applies for the purposes of section 59G(2)(b).
- (2) The instalments to be paid before the due date are balanced by those to be paid after it if the time value of the instalments to be paid before that date is equal, or approximately equal, to the time value of the instalments to be paid after it.
- (3) The time value of the instalments to be paid before the due date is the total of the time value of each of the instalments to be paid before that date (and the time value of the instalments to be paid after that date is to be read accordingly).
- (4) The time value of an instalment is—
- $$A \times T$$
- where—
- A is the amount of the instalment, and
  - T is the number of days before, or after, the due date that the instalment is to be paid.
- (5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for the purpose of determining when an amount is approximately equal to another amount.
- (6) Regulations under this section may make different provision for different cases.”

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*Finance Act 1998 (c. 36)*

- 81 FA 1998 is amended as follows.  
82 Omit section 36 (arrangements with respect to payment of corporation tax).

*Finance Act 2009 (c. 10)*

- 83 FA 2009 is amended as follows.  
84 Omit section 111 (managed payment plans).

**PART 15**

RELOCATION OF SECTION 118 OF FA 1998

*Taxes Management Act 1970 (c. 9)*

- 85 TMA 1970 is amended as follows.  
86 In Part 4, after section 43D (which is inserted by Schedule 8) insert—

**“43E Making of income tax claims by electronic communications etc**

- (1) The Commissioners for Her Majesty's Revenue and Customs may, by publishing them in a manner the Commissioners consider appropriate, give any claims directions that the Commissioners consider appropriate.
- (2) In subsection (1) “claims directions” means general directions for the purposes of income tax relating to—
  - (a) the circumstances in which, and
  - (b) the conditions subject to which,
 claims by individuals under the Tax Acts may be made by the use of an electronic communications service or otherwise without producing a claim in writing.
- (3) Directions under subsection (1)—
  - (a) may not relate to the making of a claim by an individual in the individual's capacity as a trustee, partner or personal representative, but
  - (b) subject to that, may relate to claims made by an individual through another person acting on the individual's behalf.
- (4) Directions under subsection (1) may not relate to—
  - (a) the making of a claim to which Schedule 1B to this Act applies, or
  - (b) the making of a claim under any provision of the Capital Allowances Act 2001.
- (5) Directions under subsection (1)—
  - (a) cannot modify any requirement imposed by or under any enactment as to the period within which any claim is to be made or as to the contents of any claim, but
  - (b) may include provision as to how any requirement as to the contents of a claim is to be met when the claim is not produced in writing.

*Status: Point in time view as at 31/12/2012.*

**Changes to legislation:** Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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) Directions under subsection (1) may make different provision in relation to the making of claims of different descriptions.
- (7) A direction under subsection (1) may revoke or vary any previous direction given under that subsection.
- (8) In subsection (2) “electronic communications service” has the same meaning as in the Communications Act 2003 (see section 32 of that Act).
- (9) In subsections (1) to (6), references to the making of a claim include references to any of the following—
  - (a) the making of an election,
  - (b) the giving of a notification or notice,
  - (c) the amendment of any return, claim, election, notification or notice, and
  - (d) the withdrawal of any claim, election, notification or notice,and in those subsections “claim” is to be read accordingly.
- (10) For the purposes of subsection (9)(c)—
  - (a) “return” includes any statement or declaration under the Income Tax Acts, and
  - (b) the definition of “return” given by section 118(1) of this Act does not apply.

#### **43F Effect of directions under section 43E**

- (1) If directions under section 43E(1) are in force in relation to the making of claims of any description to the Commissioners for Her Majesty's Revenue and Customs, claims of that description may be made to the Commissioners in accordance with the directions.
- (2) If directions under section 43E(1) are in force in relation to the making of claims of any description to an officer of Revenue and Customs, claims of that description may be made to an officer in accordance with the directions.
- (3) Subsections (1) and (2) apply despite any enactment or subordinate legislation which requires claims of the description concerned to be made in writing or by notice.
- (4) If directions under section 43E(1) are in force in relation to the making of claims of any description, claims of that description that are made without producing the claim in writing must be made in accordance with the directions.
- (5) In subsection (3) “subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (6) Section 43E(9) read with section 43E(10) (interpretation of references to making a claim, and meaning of “claim”) applies for the purposes of subsections (1) to (4) (as well as for those of section 43E(1) to (6)).”

*Finance Act 1998 (c. 36)*

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88 Omit section 118 (claims for income tax purposes).

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

89 ITTOIA 2005 is amended as follows.

- 90 (1) Amend section 878 (other definitions) as follows.
- (2) In subsection (3) (claims and elections) for “section 118 of FA 1998” substitute “section 43E(1) of TMA 1970”.
- (3) In subsection (4) for “(in” substitute “ more generally (but in ”.

*Income Tax Act 2007 (c. 3)*

91 ITA 2007 is amended as follows.

- 92 In section 989 (interpretation of Income Tax Acts) in the definition of “notice” for “section 118 of FA 1998” substitute “ section 43E(1) of TMA 1970 ”.
- 93 (1) Amend section 1020 (claims and elections) as follows.
- (2) In subsection (1) for “section 118 of FA 1998” substitute “ section 43E(1) of TMA 1970 ”.
- (3) In subsection (2) for “(in” substitute “ more generally (but in ”.

**PART 16**

RELOCATION OF SECTION 144 OF FA 2000

*Taxes Management Act 1970 (c. 9)*

94 TMA 1970 is amended as follows.

95 After section 106 insert—

*“Evasion*

**106A Offence of fraudulent evasion of income tax**

- (1) A person commits an offence if that person is knowingly concerned in the fraudulent evasion of income tax by that or any other person.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (3) In the application of subsection (2)(a)—
- (a) in England and Wales in relation to offences committed before the commencement of section 282(3) of the Criminal Justice Act 2003, and
- (b) in Northern Ireland,



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for “12 months” substitute “ 6 months ”.

(4) This section does not apply to things done or omitted before 1st January 2001.”

*Finance Act 2000 (c. 17)*

96 FA 2000 is amended as follows.

97 Omit section 144 (offence of fraudulent evasion of income tax).

*Serious Organised Crime and Police Act 2005 (c. 15)*

98 The Serious Organised Crime and Police Act 2005 is amended as follows.

99 In section 76(3)(n) (offence under section 144 of FA 2000 is one for which a financial reporting order may be made) for “section 144 of the Finance Act 2000 (c. 17)” substitute “ section 106A of the Taxes Management Act 1970 ”.

*Serious Crime Act 2007 (c. 27)*

100 The Serious Crime Act 2007 is amended as follows.

101 (1) Amend Schedule 1 as follows.

(2) In paragraph 8(3) (offence under section 144 of FA 2000 is a serious offence in England and Wales) for “section 144 of the Finance Act 2000 (c. 17)” substitute “ section 106A of the Taxes Management Act 1970 ”.

(3) In paragraph 24(3) (offence under section 144 of FA 2000 is a serious offence in Northern Ireland) for “section 144 of the Finance Act 2000 (c. 17)” substitute “ section 106A of the Taxes Management Act 1970 ”.

**PART 17**

RELOCATION OF SECTION 199 OF FA 2003

*Taxes Management Act 1970 (c. 9)*

102 TMA 1970 is amended as follows.

103 After section 18A insert—

**“18B Savings income: regulations about European and international aspects**

(1) The Treasury may make regulations for implementing and for dealing with matters arising out of or related to—

- (a) any EU obligation created with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the laws of the other member States, and
- (b) any arrangements made with a territory other than a member State with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the law of the other territory.

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- (2) In this section “savings income” means—
  - (a) interest, apart from interest of a prescribed description, or
  - (b) other sums of a prescribed description.
- (3) The power to make regulations under this section is exercisable by statutory instrument.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### **18C Regulations under section 18B: provision about “paying agents”**

- (1) Regulations under section 18B may, in particular, require paying agents—
  - (a) to obtain and verify prescribed descriptions of information about the identity and residence of relevant payees to whom they make savings income payments, and
  - (b) to provide to the Commissioners for Her Majesty's Revenue and Customs, or an officer of Revenue and Customs, prescribed descriptions of information about relevant payees to whom they make savings income payments and about the savings income payments which they make to them.
- (2) Regulations under section 18B may include provision for the inspection on behalf of the Commissioners of books, documents and other records of persons who are, or appear to an officer to be, paying agents.
- (3) In this section “paying agents” means persons of a prescribed description who make savings income payments to other persons.
- (4) In this section “relevant payees” means—
  - (a) persons of a prescribed description who are resident (within the meaning of regulations under section 18B) in a prescribed territory, and
  - (b) persons of any such other description as may be prescribed.
- (5) For the purposes of this section, a person makes savings income payments to another person if the person—
  - (a) makes payments of savings income to the other person, or
  - (b) secures the payment of savings income for the other person.
- (6) In this section “savings income” has the same meaning as in section 18B.
- (7) The descriptions of persons who may be prescribed under subsection (3) include, in particular, public officers and government departments.
- (8) The only territories which may be prescribed under subsection (4)(a) are—
  - (a) the other member States, and
  - (b) territories with which arrangements such as are mentioned in section 18B(1)(b) have been made.

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### **18D Content of regulations under section 18B: supplementary provision**

- (1) Regulations under section 18B may include provision for notices under such regulations to be combined with notices under sections 17 and 18.
- (2) Regulations under section 18B may include provision about the time at or within which, and the manner in which, any requirement imposed by such regulations is to be complied with.
- (3) Regulations under section 18B may include provision for penalties for failure to comply with requirements imposed by such regulations, including provision applying any provision of this Act about the determination of penalties or any other matter relating to penalties.
- (4) Regulations under section 18B—
  - (a) may make different provision for different cases or descriptions of case, and
  - (b) may include incidental, supplemental, consequential and transitional provision and savings.

### **18E Interpretation of sections 18B to 18D: “prescribed” etc**

- (1) In sections 18B to 18D “prescribed” means prescribed by regulations under section 18B.
  - (2) The following provisions do not apply for the purposes of sections 18B to 18D—
    - (a) section 118 of this Act (interpretation), and
    - (b) section 18 of ITA 2007 (meaning of “savings income” in the Income Tax Acts).”
- 104 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.
- (2) Omit the entry for regulations under section 199 of the Finance Act 2003.

*Finance Act 2003 (c. 14)*

105 FA 2003 is amended as follows.

106 Omit section 199 (savings income: power to make regulations in connection with Community obligations and international arrangements).

## **PART 18**

### **RELOCATION OF SECTION 61 OF F(No.2)A 2005**

*Finance Act 1998 (c. 36)*

107 FA 1998 is amended as follows.

108 (1) Amend Schedule 18 (company tax returns, assessments and related matters) as follows.

(2) After paragraph 87 insert—

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## “PART 10A

### SES

#### Company ceasing to be UK resident on formation of SE by merger

87A(1) Sub-paragraph (2) applies if at any time a company ceases to be resident in the United Kingdom in the course of the formation of an SE by merger, whether or not the company continues to exist after the formation of the SE.

- (2) The other Parts of this Schedule apply after that time, but in relation to liabilities accruing and matters arising before that time—
- (a) as if the company were still resident in the United Kingdom, and
  - (b) if the company has ceased to exist, as if the SE were the company.

#### SE ceasing to be UK resident

87B(1) Sub-paragraph (2) applies if at any time an SE—

- (a) transfers its registered office from the United Kingdom, and
- (b) ceases to be resident in the United Kingdom.

- (2) The other Parts of this Schedule apply after that time, but in relation to liabilities accruing and matters arising before that time, as if the SE were still resident in the United Kingdom.

#### Meaning of SE

87C In this Part “SE” means a European public limited-liability company (or Societas Europaea) within the meaning of Council Regulation (EC) No. 2157/2001 on the Statute for a European company.”

- (3) In the table in paragraph 98 (index of defined expressions) before the entry for “Self-assessment” insert—

“SE (in Part 10A)	paragraph 87C”
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#### *Finance (No. 2) Act 2005 (c. 22)*

109 F(No.2) A 2005 is amended as follows.

110 Omit section 61 (continuity for transitional purposes in cases involving SEs).

## PART 19

### RELOCATION OF PARAGRAPH 13 OF SCHEDULE 13 TO FA 2007

#### *Income Tax Act 2007 (c. 3)*

111 ITA 2007 is amended as follows.

112 After section 925 insert—

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## “Repos

### 925A Creditor repos

- (1) Subsection (2) applies if a company (“the lender”) has a creditor repo for the purposes of Chapter 10 of Part 6 of CTA 2009 (see section 543 of that Act).
- (2) Sections 918 to 925 have effect in relation to the lender while the arrangement is in force as if—
  - (a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,
  - (b) the payments were made under requirements of the arrangement, and
  - (c) the payments were made on the dates on which the income is payable.
- (3) For the purposes of subsection (2), an arrangement is in force from the time when the securities are initially sold until the earlier of—
  - (a) the time when the subsequent sale of the securities, or similar securities, takes place, and
  - (b) the time when it becomes apparent that that sale will not take place.

### 925B Debtor repos

- (1) Subsection (2) applies if a company (“the borrower”) has a debtor repo for the purposes of Chapter 10 of Part 6 of CTA 2009 (see section 548 of that Act).
- (2) The reverse charge provisions of this Chapter have effect in relation to the borrower while the arrangement is in force as if—
  - (a) the lender paid the borrower amounts which are representative of the income payable on the securities that are initially sold,
  - (b) the payments were made under requirements of the arrangement, and
  - (c) the payments were made on the dates on which the income is payable.
- (3) In subsection (2) “the reverse charge provisions of this Chapter” means—
  - (a) regulations under section 918(4), and
  - (b) sections 920 and 923.
- (4) For the purposes of subsection (2), an arrangement is in force from the time when the securities are initially sold until the earlier of—
  - (a) the time when the subsequent buying of the securities, or similar securities, takes place, and
  - (b) the time when it becomes apparent that that buying will not take place.

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### **925C Actual payments ignored if section 925A or 925B applies**

If section 925A(2) or 925B(2) applies, any payment actually made under an arrangement which is representative of any income payable on any securities is to be treated for the purposes of sections 918 to 925 as if it had not been made.

### **925D Power to modify repo sections**

- (1) The Treasury may by regulations provide for all or any of the provisions of sections 925A to 925F to apply with modifications in relation to—
  - (a) cases to which section 925E (non-standard repo cases) applies, or
  - (b) cases involving redemption arrangements, or
  - (c) both of those cases.
- (2) A case involves redemption arrangements if—
  - (a) arrangements, corresponding to those made in cases where a company has a repo, are made in relation to securities that are to be redeemed in the period after their sale, and
  - (b) the arrangements are such that a person (instead of having the right or obligation to buy those securities, or similar or other securities, at any subsequent time) has a right or obligation in respect of the benefits which will result from the redemption.
- (3) The regulations may make incidental, supplemental, consequential and transitional provision and savings.
- (4) In this section “modifications” includes exceptions and omissions.
- (5) For the purposes of subsection (2)(a) and section 925E(1), a company has a repo if—
  - (a) for the purposes of Chapter 10 of Part 6 of CTA 2009—
    - (i) it has a creditor repo (see section 543 of that Act),
    - (ii) it has a creditor quasi-repo (see section 544 of that Act),
    - (iii) it has a debtor repo (see section 548 of that Act), or
    - (iv) it has a debtor quasi-repo (see section 549 of that Act), or
  - (b) as a result of section 547 of that Act, the company has a creditor repo for the purposes of section 546 of that Act.

### **925E Cases where section 925D applies: non-standard repos**

- (1) This section applies to a case if—
  - (a) a company has a repo,
  - (b) there has been a sale of the securities under the arrangement or arrangements by reference to which the company has the repo, and
  - (c) any of conditions A to C is met.
- (2) Condition A is that those securities, or similar or other securities, are not subsequently bought under the arrangement or arrangements.

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- (3) Condition B is that provision is made by or under an arrangement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the subsequent purchase, are to represent those initially sold.
- (4) Condition C is that provision is made by or under an arrangement for securities to be treated as not so included.
- (5) Section 925D(5) interprets references in subsection (1) to a company having a repo.

### **925F Interpretation of the repo sections**

- (1) This section applies for the purposes of sections 925A to 925E and this section.
- (2) “Arrangement” includes any agreement or understanding (whether or not legally enforceable).
- (3) It does not matter whether or not provision of any arrangement conferring a right or imposing an obligation on any person to buy any securities is subject to any conditions.
- (4) “Securities” means shares, stock or other securities issued by—
  - (a) the government of the United Kingdom,
  - (b) any public or local authority in the United Kingdom,
  - (c) any UK resident company or other UK resident body,
  - (d) a government or public or local authority of a territory outside the United Kingdom, or
  - (e) any other body of persons not resident in the United Kingdom.
- (5) Securities are similar if they give their holders—
  - (a) the same rights against the same persons as to capital, interest and dividends, and
  - (b) the same remedies to enforce those rights.
- (6) Subsection (5) applies even if there is a difference in—
  - (a) the total nominal amounts of the securities,
  - (b) the form in which they are held, or
  - (c) the manner in which they can be transferred.
- (7) If—
  - (a) a person (“A”) buys securities (or has a right or obligation to buy securities), but
  - (b) the securities are (or are to be) held for the benefit of another person (“B”),

B (not A) is treated as buying (or having the right or obligation to buy) the securities.
- (8) If—
  - (a) a person (“C”) sells securities, but
  - (b) the proceeds of the sale are held for the benefit of another person (“D”),

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D (not C) is treated as selling the securities.”

- 113 In section 926 (interpretation of Chapter 9 of Part 15) after subsection (1) insert—  
“(1A) Subsection (1) applies subject to provision made in sections 925A to 925F about the interpretation of those sections or any part of them.”

*Finance Act 2007 (c. 11)*

- 114 FA 2007 is amended as follows.  
115 In Schedule 13 (sale and repurchase of securities) omit paragraph 13 (application of Chapter 9 of Part 15 of ITA 2007).

SCHEDULE 8

Section 374

MINOR AND CONSEQUENTIAL AMENDMENTS

**PART 1**

DOUBLE TAXATION RELIEF

*Taxes Management Act 1970 (c. 9)*

- 1 TMA 1970 is amended as follows.  
2 In section 9A(4)(c) (scope of enquiries) for “section 804ZA of the principal Act (schemes and arrangements designed to increase relief)” substitute “section 81(2) of TIOPA 2010 (notice to counteract scheme or arrangement designed to increase double taxation relief)”.
- 3 (1) Amend section 12B (records to be kept for purposes of returns) as follows.  
(2) In subsection (4A)(c) (records of foreign tax: not sufficient to preserve the information in them) for sub-paragraph (ii) substitute—  
“(ii) which would have been payable under the law of a territory outside the United Kingdom (“territory F”) but for a development relief.”
- (3) After subsection (4A) insert—  
“(4B) In subsection (4A)(c) “development relief” means a relief—  
(a) given under the law of territory F with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and  
(b) about which provision is made in arrangements that have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).”
- 4 In section 24 (power to obtain information about income from securities) after subsection (3) insert—  
“(3ZA) If—



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- (a) a person beneficially entitled to income from any securities is resident in a territory outside the United Kingdom, and
  - (b) there are double taxation arrangements with respect to income tax or corporation tax which relate to that territory,
- subsection (3) does not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.
- (3ZB) In subsection (3ZA) “double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).”
- 5 In section 29(7A) (discovery assessments: relaxation of pre-conditions) for “section 804ZA of the principal Act” substitute “ section 81(2) of TIOPA 2010 (notice to counteract scheme or arrangement designed to increase double taxation relief) ”.
- 6 In section 43C(5) (meaning of consequential claim) for “or 43A” substitute “ , 43A or 43D(6) ”.
- 7 In Part 4, after section 43C insert—

**“43D Claims for double taxation relief in relation to petroleum revenue tax**

- (1) This section has effect in relation to a claim for relief under sections 2 to 6 of TIOPA 2010 in relation to petroleum revenue tax.
- (2) The claim shall be for an amount which is quantified at the time when the claim is made.
- (3) If, after the claim has been made, the claimant discovers that an error or mistake has been made in the claim, the claimant may make a supplementary claim within the time allowed for making the original claim.
- (4) Schedule 1A to this Act applies as respects the claim, but as if the reference in paragraph 2A(4) to a year of assessment included a reference to a chargeable period.
- (5) The claim may not be made more than 4 years after the end of the chargeable period to which it relates, but this is subject to any provision of the Taxes Acts prescribing a longer or shorter period.
- (6) If the claim or a supplementary claim could not have been allowed but for the making of an assessment to petroleum revenue tax after the end of the chargeable period to which the claim relates, the claim or supplementary claim may be made at any time before the end of the chargeable period following that in which the assessment is made.
- (7) In this section “chargeable period” has the same meaning as in the Oil Taxation Act 1975 (see section 1(3) and (4) of that Act, under which a period that is a chargeable period ends with 30 June or 31 December and, apart from the first chargeable period in relation to an oil field, is a period of 6 months).”

*Income and Corporation Taxes Act 1988 (c. 1)*

- 8 ICTA is amended as follows.

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#### Textual Amendments

**F156** Sch. 8 para. 9 repealed (with effect in accordance with s. 26(3) of the amending Act) by Finance Act 2012 (c. 14), s. 26(2)(e)

- 10 In section 750(3)(b) (disregard of certain double taxation relief) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 (double taxation relief) ”.
- 11 In section 751(6)(a) (“creditable tax” includes amounts of double taxation relief) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 (double taxation relief) ”.
- 12 In section 755A(4A)(b) (dividend paid by controlled foreign company to company carrying on life assurance business) for “subsection (4) of section 804B of this Act” substitute “ subsection (5) of section 97 of TIOPA 2010 ”.
- 13 Omit section 788 (giving effect to double taxation arrangements).
- 14 Omit section 789 (conversion of references to the profits tax in arrangements given effect under old law).
- 15 Omit section 790 (unilateral relief).
- 16 Omit section 791 (power to make regulations giving effect to section 788 and double taxation arrangements).
- 17 Omit sections 792 to 798C (which contain rules about double taxation relief by way of credit).
- 18 Omit sections 799 and 801 to 801B (double taxation relief: dividends).
- 19 Omit sections 803 to 804E and 804G to 806 (further rules about credit relief).
- 20 (1) Amend section 806A as follows.
- (2) In subsection (2)—
- (a) in paragraph (c) for “section 801A” substitute “ section 67(6) of TIOPA 2010 ”,
- (b) in paragraph (c) for “subsection (1)(b) of that section” substitute “ section 67(3) of that Act ”,
- (c) in paragraph (d) for “section 803” substitute “ section 70(2) of TIOPA 2010 ”,
- (d) in paragraph (d) for “subsection (1)(b) of that section” substitute “ section 70(1)(d) of that Act ”, and
- (e) in paragraph (e) for “section 811” substitute “ section 112 of TIOPA 2010 ”.
- (3) In subsection (4)(a) for “section 797” substitute “ section 42(2) of TIOPA 2010 ”.
- (4) In subsection (5)—
- (a) for “section 799(1)” substitute “ section 57(1) of TIOPA 2010 ”,
- (b) for “section 801(2) or (3)” substitute “ section 65(4) of TIOPA 2010 ”, and
- (c) for “subsection (2) or (3) of section 801” substitute “ section 65(4) of TIOPA 2010 ”.
- 21 (1) Amend section 806B as follows.
- (2) In subsection (2)(b) for “section 797” substitute “ section 42 of TIOPA 2010 ”.

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- (3) In subsection (3)(b) for “section 799(1)” substitute “ section 57(1) of TIOPA 2010 ”.
- (4) In subsection (4)—
- (a) in paragraph (a) for “section 799(1)” substitute “ section 57(1) of TIOPA 2010 ”,
  - (b) in paragraph (b) for “section 799(1A)” substitute “ Step 3 in section 58(1) of TIOPA 2010 ”,
  - (c) in paragraph (b) for “M%” substitute “ M ”, and
  - (d) in paragraph (b)(ii) for “U” substitute “ PA ”.
- (5) In subsection (5)—
- (a) for “subsection (2) or (3) of section 801” substitute “ section 65(4) of TIOPA 2010 ”,
  - (b) in each of paragraphs (a), (b)(ii) and (c)(ii) for “subsection (2) or (3), as the case may be, of section 801” substitute “ section 65(4) of TIOPA 2010 ”,
  - (c) for “section 799(1A)” substitute “ Step 3 in section 58(1) of TIOPA 2010 ”,
  - (d) for “M%” substitute “ M ”, and
  - (e) for “U” substitute “ PA ”.
- (6) In subsection (7)(b) for “section 799(1)” substitute “ section 59 of TIOPA 2010 ”.
- (7) In subsection (10)—
- (a) in the definition of “lower level dividend” for “section 801(2) or (3)” substitute “ section 65(4) of TIOPA 2010 ”,
  - (b) in paragraph (a) of the definition of “the relevant tax” for “section 799(1)” substitute “ section 57(1) of TIOPA 2010 ”, and
  - (c) in paragraph (b) of that definition for “section 801(2) or (3)” substitute “ section 65(4) of TIOPA 2010 ”.
- 22 In section 806C(3) and (4) for “this Part” substitute “ Part 2 of TIOPA 2010 ”.
- 23 In section 806D(3), (4) and (5) for “this Part” substitute “ Part 2 of TIOPA 2010 ”.
- 24 In section 806F(1) and (2) for “this Part” substitute “ Part 2 of TIOPA 2010 ”.
- 25 (1) Amend section 806J (interpretation of sections 806A to 806J) as follows.
- (2) In subsection (5)(b) for “subsection (6)(b) of section 790” substitute “ section 15 or 16 of TIOPA 2010 ”.
  - (3) In subsection (5) for “subsection (10) of that section” substitute “ section 12(3) of TIOPA 2010 ”.
  - (4) For subsection (6) substitute—
    - “(6) For the purposes of the foreign dividend provisions of this Chapter a company is related to another company if that other company—
    - (a) controls directly or indirectly, or
    - (b) is a subsidiary of a company which controls directly or indirectly, at least 10% of the voting power in the first-mentioned company.”
  - (5) In subsection (7) in the definition of “the mixer cap” for “section 799(1)” substitute “ Step 6 in section 58(1) of TIOPA 2010 ”.
- 26 Omit sections 806L and 806M (unrelieved foreign tax).

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- 27 Omit sections 807 and 807A (provision, in connection with relief, about accrued income profits and about loan relationships).
- 28 Omit sections 807B to 807G (provisions related to the Mergers Directive).
- 29 Omit sections 808A to 809 and 811 (provision, in connection with relief, about interest, royalties and discretionary trusts, and for deductions where no credit allowed).
- 30 In section 812(1)(b) for “section 788(1)” substitute “ section 2(1) of TIOPA 2010 ”.
- 31 In section 814(1)(a) for “section 788(1)” substitute “ section 2(1) of TIOPA 2010 ”.
- 32 Omit sections 815A to 815B and 816 (provision, in connection with relief, about transfer of non-UK trades, about foreign enterprises and about cases presented under arrangements, and provision about the Arbitration Convention and about disclosure of information).
- 33 In section 828(4) (orders and regulations not subject to annulment) omit “791”.
- F157<sup>34</sup> .....

#### Textual Amendments

F157 Sch. 8 para. 34 omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), Sch. 16 para. 247(x)

- 35 (1) Amend Schedule 26 (reliefs against liability for tax in respect of chargeable profits of controlled foreign companies) as follows.
- (2) In paragraph 3(5)(b) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 ”.
- (3) In paragraph 4(2) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 (double taxation relief) ”.
- (4) In paragraph 4(4) for “section 796 or section 797” substitute “ section 36, 40, 41 or 42 of TIOPA 2010 ”.
- (5) In paragraph 5(1) for paragraphs (a) and (b) substitute—
- “(a) arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom), or
- (b) unilateral relief arrangements for a territory outside the United Kingdom (as defined by section 8 of that Act),”.
- (6) In paragraph 5(1) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 ”.
- (7) In paragraph 5(2) for “section 795(2)(b)” substitute “ section 31(2)(b) and (3) of TIOPA 2010 ”.
- (8) In paragraph 6(1)(c) for “Part XVIII” substitute “ Part 2 of TIOPA 2010 ”.
- 36 Omit Schedule 28AB (prescribed schemes and arrangements for purposes of section 804ZA).

#### Finance Act 1989 (c. 26)

- 37 FA 1989 is amended as follows.

*Status: Point in time view as at 31/12/2012.*

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38 In section 115(1) (tax credits for dividends paid to non-residents by UK resident companies) for “having effect by virtue of section 788 of the Taxes Act 1988” substitute “ which have effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ”.

39 In section 182A(6) (double taxation: disclosure of information: interpretation) for “section 815B(4) of the Taxes Act 1988” substitute “ section 126 of the Taxation (International and Other Provisions) Act 2010 ”.

*Taxation of Chargeable Gains Act 1992 (c. 12)*

40 TCGA 1992 is amended as follows.

41 In section 10(4) (persons exempt under Part 18 of ICTA) for “Part XVIII of the Taxes Act (double taxation relief agreements)” substitute “ Part 2 of TIOPA 2010 (double taxation relief) ”.

42 In section 10B(3) (companies exempt under Part 18 of ICTA) for “Part 18 of the Taxes Act (double taxation relief agreements)” substitute “ Part 2 of TIOPA 2010 (double taxation relief) ”.

43 In section 59(2)(b) (arrangements giving relief for partnership gains) for “falling within section 788 of the Taxes Act” substitute “ that have effect under section 2(1) of TIOPA 2010 ”.

44 In sections 140H(3), 140I(3) and 140J(3) (gains on which tax would have been charged but for the Mergers Directive)—

- (a) for “Part 18 of the Taxes Act” substitute “ Part 2 of TIOPA 2010 ”, and
- (b) for “arrangements having effect by virtue of section 788 of that Act (bilateral relief)” substitute “ double taxation relief arrangements ”.

45 Omit section 277 (application to capital gains tax of provisions about double taxation relief).

46 Omit section 278 (deduction for foreign gains tax in respect of which double taxation relief by way of credit against UK tax not allowed).

47 In section 288(1) (interpretation) for the definition of “double taxation relief arrangements” substitute—

““double taxation relief arrangements”—

- (a) in relation to a company means arrangements that have effect under section 2(1) of TIOPA 2010 except so far as they have effect in relation to petroleum revenue tax, and
- (b) in relation to any other person means arrangements that have effect under section 2(1) of TIOPA 2010 but only so far as they have effect in relation to capital gains tax;”.

*Finance Act 1993 (c. 34)*

48 FA 1993 is amended as follows.

49 Omit section 194 (application to petroleum revenue tax of provisions about double taxation relief).

50 In section 195(3) (interpretation of Part 3) omit “, other than section 194,”.

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*Finance (No. 2) Act 1997 (c. 58)*

51 F(No.2) A 1997 is amended as follows.

- 52 (1) Amend section 30 (tax credits) as follows.
- (2) In subsection (9) for “section 788 of the Taxes Act 1988” substitute “ section 2(1) of the Taxation (International and Other Provisions) Act 2010 ”.
- (3) In subsection (10)(a) for “by virtue of section 788 of the Taxes Act 1988” substitute “ under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ”.

*Finance Act 1998 (c. 36)*

53 FA 1998 is amended as follows.

- 54 (1) Amend Schedule 18 (company tax returns etc) as follows.
- (2) In paragraph 8(1) (calculation of tax payable)—
- (a) in paragraph 2 of the Second step for “section 788 or 790 of that Act” substitute “ under sections 2 and 6 of TIOPA 2010 or under section 18(1)(b) and (2) of that Act ”, and
- (b) in paragraph 3 of that step for “that Act” substitute “ the Taxes Act 1988 ”.
- (3) In paragraph 22(3)(c) (records of foreign tax: not sufficient to preserve the information in them) for sub-paragraph (ii) substitute—
- “(ii) which would have been payable under the law of a territory outside the United Kingdom (“territory F”) but for a development relief.”
- (4) In paragraph 22 after sub-paragraph (3) insert—
- “(4) In sub-paragraph (3)(c) “development relief” means a relief—
- (a) given under the law of territory F with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and
- (b) about which provision is made in arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).”

*Finance Act 2000 (c. 17)*

55 FA 2000 is amended as follows.

- 56 (1) Amend Schedule 22 (tonnage tax) as follows.
- (2) For paragraph 57(2)(a) (“relief” includes double taxation relief) substitute—
- “(a) sections 2 and 6 of the Taxation (International and Other Provisions) Act 2010 (double taxation relief by agreement with territories outside the United Kingdom),
- (aa) section 18(1)(b) and (2) of that Act (unilateral relief from double taxation), or”.

*Capital Allowances Act 2001 (c. 2)*

57 CAA 2001 is amended as follows.

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- 58 In section 105(4) (meaning of “double taxation arrangements”) for the words from “specified” to the end substitute “ which have effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010 (double taxation relief by agreement with territories outside the United Kingdom) ”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 59 ITEPA 2003 is amended as follows.
- 60 In section 643(6) in the definition of “double taxation relief arrangements” for the words from “specified” to the end substitute “ which have effect under section 2(1) of TIOPA 2010; ”.

*Finance Act 2004 (c. 12)*

- 61 FA 2004 is amended as follows.
- 62 In Chapter 7 of Part 3 (special withholding tax) omit—
- (a) sections 107 to 111,
  - (b) sections 113 and 114, and
  - (c) section 115(4).
- 63 In section 189(3) (treatment of relevant UK earnings) for “by virtue of section 788 of ICTA” substitute “ under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ”.
- 64 In Schedule 34 (non-UK pensions schemes: application of certain charges) in paragraph 20 (meaning of “double tax arrangements”) for “by virtue of section 788 of ICTA” substitute “ under section 2(1) of the Taxation (International and Other Provisions) Act 2010 ”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 65 ITTOIA 2005 is amended as follows.
- 66 In section 397A(7) (interpretation of section) in the definition of “special withholding tax” for “section 107(3) of FA 2004” substitute “ section 136(6) of TIOPA 2010 ”.
- 67 For section 397BA(2)(a) (which refers to arrangements to which section 788 of ICTA applies) substitute—
- “(a) arrangements made in relation to the territory have effect under section 2(1) of TIOPA 2010 (“double taxation relief arrangements”), and”.
- 68 In section 763(3) (priority of double taxation arrangements) for “section 788 of ICTA” substitute “ section 2(1) of TIOPA 2010 ”.
- 69 (1) Section 764 (application of ICTA provisions about special relationships) is amended as follows.
- (2) In subsection (1), and in the title, for “ICTA” substitute “ TIOPA 2010 ”.
  - (3) In subsection (1) for “special relationship provision” substitute “ special relationship rule ”.

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- (4) In subsection (2) for “subsections (2) to (4) of section 808A of ICTA” substitute “section 131(3), (5) and (6) of TIOPA 2010”.
- (5) In subsection (3) for “subsections (2) to (7) and (9) of section 808B of ICTA” substitute “sections 132(3) to (5), (7) and (8) and 133 of TIOPA 2010”.
- 70 In section 858(1)(b) (resident partners and double taxation agreements) for “section 788 of ICTA” substitute “section 2(1) of TIOPA 2010”.

*Income Tax Act 2007 (c. 3)*

- 71 ITA 2007 is amended as follows.
- 72 In section 1(2)(a) (example of income tax provisions located outside ITA 2007) for “Part 18 of ICTA” substitute “Part 2 of TIOPA 2010”.
- 73 (1) Amend section 26(1)(b) (provisions referred to at Step 6 of the calculation in section 23) as follows.
- (2) Omit the entries for sections 788 and 790 of ICTA.
- (3) Omit “and” before the entry for sections 677 and 678 of ITTOIA 2005.
- (4) After that entry insert—
- “sections 2 and 6 of TIOPA 2010 (double taxation relief: relief by agreement), and
- section 18(1)(b) and (2) of TIOPA 2010 (relief for foreign tax where no double taxation arrangements).”
- 74 In section 27(6) (tax reductions for individuals by way of double taxation relief)—
- (a) in paragraph (a) for “section 788 of ICTA” substitute “sections 2 and 6 of TIOPA 2010”, and
- (b) in paragraph (b) for “section 790(1) of ICTA” substitute “section 18(1)(b) and (2) of TIOPA 2010”.
- 75 In section 28(4) (tax reductions for non-individuals by way of double taxation relief)—
- (a) in paragraph (a) for “section 788 of ICTA” substitute “sections 2 and 6 of TIOPA 2010”, and
- (b) in paragraph (b) for “section 790(1) of ICTA” substitute “section 18(1)(b) and (2) of TIOPA 2010”.
- 76 (1) Amend section 29 (tax reductions: supplementary) as follows.
- (2) In subsection (4)(a) for “section 796(1), (2) and (3) of ICTA” substitute “sections 36(1) to (5) and (7) and 41 of TIOPA 2010”.
- (3) In subsection (5) for “section 788 of ICTA” substitute “sections 2 and 6 of TIOPA 2010”.
- 77 (1) Amend section 32 (liabilities not dealt with in calculation under section 23) as follows.
- (2) Omit the entry for section 804(5B)(a) of ICTA.
- (3) Omit the word “and” before the entry for section 682(4) of ITTOIA 2005.



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- (4) After that entry insert “, and  
under section 24(4) of TIOPA 2010 (recovery of excess credit for overseas tax).”
- 78 (1) Amend section 53 (transfer of unused relief: general) as follows.
- (2) In subsection (2) (tax reductions by way of double taxation relief)—
- (a) in paragraph (a) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”, and
- (b) in paragraph (b) for “section 790(1) of ICTA” substitute “ section 18(1)(b) and (2) of TIOPA 2010 ”.
- (3) In subsection (5) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”.
- 79 (1) In section 424(2) (gift aid: charge to tax: interpretation) amend paragraph (b) of the definition of “amount C” as follows.
- (2) In sub-paragraph (i) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”.
- (3) In sub-paragraph (ii) for “section 790(1) of ICTA” substitute “ section 18(1)(b) and (2) of TIOPA 2010 ”.
- 80 (1) Amend section 425 (“total amount of income tax” in sections 423 and 424) as follows.
- (2) In subsection (4) (tax reductions to be ignored)—
- (a) in paragraph (b) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”, and
- (b) in paragraph (c) for “section 790(1) of ICTA” substitute “ section 18(1)(b) and (2) of TIOPA 2010 ”.
- (3) In subsection (6) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”.
- 81 In section 527(2) omit paragraph (b) (subsection (1) does not apply to income chargeable to tax under section 804 of ICTA).
- 82 In section 582(2) (regulations may remove or reduce rights to claim double taxation relief) for “Part 18 of ICTA” substitute “ Part 2 of TIOPA 2010 ”.
- 83 In section 828C(4) (entitlement to double taxation relief)—
- (a) in paragraph (a) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”, and
- (b) in paragraph (b) for “section 790(1)” substitute “ section 18(1)(b) and (2) ”.
- 84 In section 849(1) (interaction between Part 15 of ITA 2007 and regulations under section 791 of ICTA) for “section 791 of ICTA (double taxation relief: power to make regulations for carrying out section 788)” substitute “ section 7 of TIOPA 2010 (double taxation arrangements: general regulations) ”.
- 85 In section 1023 (meaning in Act of “double taxation arrangements”) for “section 788 of ICTA” substitute “ section 2(1) of TIOPA 2010 ”.
- 86 In section 1026—
- (a) after paragraph (e) insert “ or ”, and

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- (b) omit paragraph (g) (“non-qualifying income” in section 1025 includes deemed receipts under section 804(5B) of ICTA) and the “or” preceding it.

*Finance Act 2008 (c. 9)*

87 FA 2008 is amended as follows.

88 In Schedule 17 in paragraph 10(3) after paragraph (c) insert “ and ”.

*Corporation Tax Act 2009 (c. 4)*

89 CTA 2009 is amended as follows.

90 In section 464(3)—

(a) in paragraph (f) for “section 795(4) of ICTA” substitute “ section 31(5) of TIOPA 2010 ”, and

(b) in paragraph (g) for “section 811(3) of ICTA” substitute “ section 112(5) of TIOPA 2010 ”.

91 In section 486(2) for “section 811 of ICTA” substitute “ section 112 of TIOPA 2010 ”.

92 In section 550(7) (meaning of “double taxation relief”) for “Part 18 of ICTA” substitute “ Part 2 of TIOPA 2010 ”.

93 In section 697(3)(a) (exceptions to section 696) for “because of section 788 of ICTA” substitute “ under section 2(1) of TIOPA 2010 ”.

94 In section 782(1)(a) (intangible fixed assets transferred in the course of certain transfers of a business)—

(a) for “section 807B(2)(b)(iii) of ICTA” substitute “ section 116(2)(b)(iii) of TIOPA 2010 ”, and

(b) for “section 807C” substitute “ section 117 ”.

95 In section 793(3)(b) (when election under section 792 may be made) for “arrangements under Part 18 of ICTA” substitute “ arrangements that have effect under section 2(1) of TIOPA 2010 ”.

96 In section 827(7) (no claim under section if claim made under section 807B(6) of ICTA)—

(a) for “section 807B(6) of ICTA” substitute “ section 116(6) of TIOPA 2010 ”, and

(b) for “section 807C” substitute “ section 117 ”.

97 In section 906(3)—

(a) omit “and” after paragraph (a), and

(b) after paragraph (b) insert “, and

(c) section 112(5) of TIOPA 2010 (deduction for foreign tax where no credit available).”

98 For section 931C(1)(a) (which refers to arrangements to which section 788 of ICTA applies) substitute—

“(a) arrangements made in relation to the territory have effect under section 2(1) of TIOPA 2010 (“double taxation relief arrangements”), and”.

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- 99 In section 931H(5) for “Part 18 of ICTA” substitute “ Part 2 of TIOPA 2010 ”.
- 100 In section 931J(7) for “Part 18 of ICTA” substitute “ Part 2 of TIOPA 2010 ”.
- 101 In section 1266(1)(b) (resident partners and double taxation agreements) for “section 788 of ICTA” substitute “ section 2(1) of TIOPA 2010 ”.

*Finance Act 2009 (c. 10)*

- 102 FA 2009 is amended as follows.
- 103 In section 56(1) (tax in respect of MEPs' pay) for “Part 18 of ICTA (double tax)” substitute “ Part 2 of TIOPA 2010 (double taxation )”.
- 104 In Schedule 16 in paragraph 7(2)(a) (purposes for which straddling accounting periods are split) after “Chapter 4 of Part 17, and Part 18, of ICTA” insert “ and Part 2 of TIOPA 2010 ”.
- 105 In Schedule 35 in paragraph 2(4)(b) for “section 788 of ICTA” substitute “ sections 2 and 6 of TIOPA 2010 ”.

**PART 2**

TRANSFER PRICING AND ADVANCE PRICING AGREEMENTS

*Taxes Management Act 1970 (c. 9)*

- 106 TMA 1970 is amended as follows.
- 107 In section 9A(4)(b) (scope of enquiries) for “paragraph 5C of Schedule 28AA to the principal Act” substitute “ section 168(1) of TIOPA 2010 ”.
- 108 (1) Amend the second column of the Table in section 98 (special returns etc) as follows.
- (2) Omit the entry for section 86(4) of FA 1999.
- (3) At the appropriate place insert—

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“Section 228 of TIOPA 2010.”

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*Income and Corporation Taxes Act 1988 (c. 1)*

- 109 ICTA is amended as follows.
- 110 Omit section 770A (which introduces Schedule 28AA).
- 111 Omit Schedule 28AA (transfer pricing).

*Finance Act 1998 (c. 36)*

- 112 FA 1998 is amended as follows.
- 113 Omit section 110 (determinations requiring the sanction of the Commissioners for Her Majesty's Revenue and Customs).

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- 114 Omit section 111 (duty to give notice to persons who may be able to make or amend a claim under paragraph 6 of Schedule 28AA or who may have rights to be heard in appeals under that Schedule).

*Finance Act 1999 (c. 16)*

- 115 FA 1999 is amended as follows.
- 116 Omit section 85 (advance pricing agreements).
- 117 Omit section 86(1) to (8) and (10) (provisions supplementary to section 85).
- 118 Omit section 87 (effect of advance pricing agreements on non-parties).

*Finance Act 2000 (c. 17)*

- 119 (1) Schedule 22 to FA 2000 (tonnage tax) is amended as follows.
- (2) In paragraph 58(1) for the words after paragraph (b) substitute—
- “Part 4 of the Taxation (International and Other Provisions) Act 2010 (transactions not at arm's length) has effect with the omission of sections 174 to 184, 187 to 189 and 191 to 196 (elimination of double counting etc).”
- (3) In paragraph 58(2) for “Schedule 28AA” substitute “ Part 4 of the Taxation (International and Other Provisions) Act 2010 ”.
- (4) In paragraph 59(1) for “Schedule 28AA to the Taxes Act 1988” substitute “ Part 4 of the Taxation (International and Other Provisions) Act 2010 ”.
- (5) For paragraph 59(2) substitute—
- “(2) As applied by sub-paragraph (1), Part 4 of the Taxation (International and Other Provisions) Act 2010 has effect with the omission of sections 174 to 184, 187 to 189 and 191 to 196 (elimination of double counting etc).”
- (6) In paragraph 59(3) for “Schedule 28AA” substitute “ Part 4 of the Taxation (International and Other Provisions) Act 2010 ”.
- (7) In paragraph 60(2) for “Schedule 28AA” substitute “ Part 4 of the Taxation (International and Other Provisions) Act 2010 ”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 120 ITTOIA 2005 is amended as follows.
- 121 (1) Amend section 172F (transfer pricing rules to take precedence over sections 172D and 172E) as follows.
- (2) In subsection (1)(a) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- (3) In subsection (1)(b) for “that Schedule” substitute “ that Part ”.
- (4) In subsection (2) for “Schedule 28AA to ICTA without falling to be adjusted under that Schedule” substitute “ Part 4 of TIOPA 2010 without falling to be adjusted under that Part ”.
- (5) For subsection (2)(a) and (b) substitute—

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- “(a) the condition in section 147(1)(a) of TIOPA 2010 is met, and
- (aa) the participation condition is met (see subsection (2B)), but
- (b) either—
  - (i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or
  - (ii) one of the exceptions mentioned in subsection (2A) applies.”

(6) After subsection (2) insert—

“(2A) The exceptions are those in—

- (a) section 447(5) of CTA 2009 (exchange gains or losses from loan relationships),
- (b) section 694(8) of CTA 2009 (exchange gains or losses from derivative contracts),
- (c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and
- (d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains).

(2B) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”

122 In section 173(2) (trading stock not to be valued if paragraph 1(2) of Schedule 28AA to ICTA has effect) for “paragraph 1(2) of Schedule 28AA to ICTA” substitute “section 147(3) or (5) of TIOPA 2010”.

*Corporation Tax Act 2009 (c. 4)*

123 CTA 2009 is amended as follows.

124 (1) Amend section 161 (transfer pricing rules take precedence over rules about disposals and acquisitions of trading stock not made in course of the trade concerned) as follows.

(2) In subsection (1)(a) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.

(3) In subsection (1)(b) for “that Schedule” substitute “that Part”.

(4) For subsection (2) substitute—

“(2) For the purposes of subsection (1)(b), the relevant consideration falls within Part 4 of TIOPA 2010 without falling to be adjusted under that Part if—

- (a) the condition in section 147(1)(a) of TIOPA 2010 is met, and
- (b) the participation condition is met (see subsection (3A)), but
- (c) either—
  - (i) one of the conditions in section 147(1)(c) and (d) of TIOPA 2010 is not met, or
  - (ii) one of the exceptions mentioned in subsection (3) applies.”

(5) In subsection (3) for paragraphs (c) and (d) substitute—

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- “(c) section 213 of TIOPA 2010 (saving for provisions relating to capital allowances), and  
(d) section 214 of TIOPA 2010 (saving for provisions relating to chargeable gains).”
- (6) After subsection (3) insert—
- “(3A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(b) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”
- 125 In section 162(2) (trading stock not to be valued if paragraph 1(2) of Schedule 28AA to ICTA has effect) for “paragraph 1(2) of Schedule 28AA to ICTA” substitute “section 147(3) or (5) of TIOPA 2010”.
- 126 In section 340(7) (Schedule 28AA to ICTA does not apply to amounts accounted for under the section) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.
- 127 In section 374(3)(a) (meaning of non-qualifying territory) for “paragraph 5E of Schedule 28AA to ICTA” substitute “section 173 of TIOPA 2010”.
- 128 (1) Amend section 376(5) (interpretation of section 375) as follows.
- (2) In the definition of “non-qualifying territory” for “paragraph 5E of Schedule 28AA to ICTA” substitute “section 173 of TIOPA 2010”.
- (3) In the definition of “small or medium-sized enterprise” for “paragraph 5D of that Schedule” substitute “section 172 of TIOPA 2010”.
- 129 In section 377(3)(a) (meaning of non-qualifying territory) for “paragraph 5E of Schedule 28AA to ICTA” substitute “section 173 of TIOPA 2010”.
- 130 In section 407(6)(a) (meaning of non-qualifying territory) for “paragraph 5E of Schedule 28AA to ICTA” substitute “section 173 of TIOPA 2010”.
- 131 (1) Amend section 410(5) (interpretation of section) as follows.
- (2) In the definition of “non-qualifying territory” for “paragraph 5E of Schedule 28AA to ICTA” substitute “section 173 of TIOPA 2010”.
- (3) In the definition of “small or medium-sized enterprise” for “paragraph 5D of that Schedule” substitute “section 172 of TIOPA 2010”.
- 132 In section 444(3) (section is subject to section 445) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.
- 133 (1) Amend section 445 (disapplication of section 444 where Schedule 28AA to ICTA applies) as follows.
- (2) In subsection (1) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.
- (3) In each of paragraphs (a) and (b) of that subsection for “that Schedule” substitute “that Part”.
- (4) In subsection (2)(a) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.
- (5) In subsection (2)(b) for “that Schedule” substitute “that Part”.
- (6) In subsection (3) for “Schedule 28AA to ICTA” substitute “Part 4 of TIOPA 2010”.

*Status: Point in time view as at 31/12/2012.*

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- (7) For subsection (3)(a) substitute—
- “(a) the condition in section 147(1)(a) of TIOPA 2010 is met,
  - (aa) the participation condition is met (see subsection (3A)), and”.
- (8) After subsection (3) insert—
- “(3A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (3)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”
- (9) In subsection (4) for “Schedule 28AA to ICTA,” substitute “ Part 4 of TIOPA 2010, ”.
- (10) In subsection (5) for “Schedule 28AA to ICTA (see paragraph 1 of that Schedule)” substitute “ Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ”.
- (11) In the title for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 134 (1) Amend section 446 (bringing into account adjustments made under Schedule 28AA to ICTA) as follows.
- (2) In each of subsections (1), (2), (4) and (6), and in the title, for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 135 (1) Amend section 447 (exchange gains and losses on debtor relationships: loans disregarded under Schedule 28AA to ICTA) as follows.
- (2) In subsection (1)(c) for “paragraph 1 of Schedule 28AA to ICTA” substitute “ section 147(3) or (5) of TIOPA 2010 ”.
  - (3) In subsection (5) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
  - (4) In subsection (7) for “Schedule 28AA to ICTA (see paragraph 1 of that Schedule)” substitute “ Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ”.
  - (5) In the title for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 136 In section 452(1)(a) and (3)(a) (exchange gains and losses where loan not on arm's length terms) for “paragraph 6D(2) of Schedule 28AA to ICTA” substitute “ section 192(1) of TIOPA 2010 ”.
- 137 In section 455(5) (section does not apply if paragraph 1(2) of Schedule 28AA to ICTA has effect) for “paragraph 1(2) of Schedule 28AA to ICTA” substitute “ section 147(3) or (5) of TIOPA 2010 ”.
- 138 In section 464(3)(a) (which refers to and describes section 445(2)) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 139 In section 484(1) (non-lending relationships treated as loan relationships: meaning of “interest”) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 140 In section 508(2) (arrangements which are not alternative finance arrangements)—
- (a) in paragraph (b) for “paragraph 1(2) of Schedule 28AA to ICTA” substitute “ subsection (3) or (5) of section 147 of TIOPA 2010 ”,
  - (b) in that paragraph for “in paragraph 1(2)(a) of that Schedule” substitute “ in that subsection ”, and
  - (c) in paragraph (c) for “that Schedule” substitute “ Part 4 of TIOPA 2010 ”.

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- 141 In section 625(7) (Schedule 28AA to ICTA does not apply to amounts if credits or debits in respect of those amounts are determined under the section), for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 142 (1) Amend section 693 (bringing into account adjustments under Schedule 28AA to ICTA) as follows.
- (2) In subsections (1), (2) and (4), and the title, for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 143 (1) Amend section 694 (exchange gains and losses where derivative contracts not on arm's length terms) as follows.
- (2) In subsections (2), (4) and (8) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- (3) In subsection (10) for “Schedule 28AA to ICTA (see paragraph 1 of that Schedule)” substitute “ Part 4 of TIOPA 2010 (see sections 149 and 151 of that Act) ”.
- 144 In section 698(5) (section does not apply if paragraph 1(2) of Schedule 28AA to ICTA increases company's tax liability) for “paragraph 1(2) of Schedule 28AA to ICTA” substitute “ section 147(3) or (5) of TIOPA 2010 ”.
- 145 (1) In the provisions mentioned in sub-paragraph (2) (provisions which relate to intangible fixed assets and refer to matters being subject to adjustments under Schedule 28AA to ICTA) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- (2) The provisions are—
- section 721(3),
  - section 728(3),
  - section 729(4),
  - section 731(5),
  - section 736(7),
  - section 739(2),
  - section 740(4),
  - section 742(3), and
  - section 743(3).
- 146 In section 775(3) (intangible fixed assets: transfers within a group) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- 147 (1) Amend section 846 (intangible fixed assets: transfers not at arm's length) as follows.
- (2) In subsection (1)(a) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.
- (3) In subsection (1)(b) for “that Schedule” substitute “ that Part ”.
- (4) In subsection (2) for “within that Schedule” substitute “ within that Part ”.
- (5) For subsection (2)(a) substitute—
- “(a) the condition in section 147(1)(a) of TIOPA 2010 is met,
  - (aa) the participation condition is met (see subsection (2A)), and”.
- (6) After subsection (2) insert—



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“(2A) Section 148 of TIOPA 2010 (when the participation condition is met) applies for the purposes of subsection (2)(aa) as it applies for the purposes of section 147(1)(b) of TIOPA 2010.”

(7) In subsection (3) for the words after “meaning” substitute “ as in that Part (see, respectively, sections 149 and 151 of TIOPA 2010) ”.

148 In section 931P(4) (section does not apply if Schedule 28AA to ICTA applies) for “Schedule 28AA to ICTA” substitute “ Part 4 of TIOPA 2010 ”.

*Finance Act 2009 (c. 10)*

149 FA 2009 is amended as follows.

150 In Schedule 17 (international movement of capital) in paragraph 12(5) for “Paragraph 3 of Schedule 28AA to ICTA” substitute “ Section 150 of TIOPA 2010 ”.

**PART 3**

TAX ARBITRAGE

*Finance (No. 2) Act 2005 (c. 22)*

151 F(No.2)A 2005 is amended as follows.

152 Omit sections 24 to 28 (avoidance involving tax arbitrage).

153 Omit section 30 (interpretation of Chapter 4 of Part 2).

154 Omit section 31 (commencement of Chapter 4 of Part 2).

155 Omit Schedule 3 (qualifying schemes).

**PART 4**

TAX TREATMENT OF FINANCING COSTS AND INCOME

*Taxes Management Act 1970 (c. 9)*

156 TMA 1970 is amended as follows.

157 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

(2) Omit the entry for regulations under Schedule 15 to FA 2009.

(3) At the appropriate place insert—

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“Regulations under section 283, 284, 285, 295 or 297 of TIOPA 2010.”

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*Finance Act 2009*

158 FA 2009 is amended as follows.

159 Omit section 35 (which introduces Schedule 15).

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- 160 Omit paragraphs 1 to 94 and 97 to 99 of Schedule 15 (tax treatment of financing costs and income).

## PART 5

### OFFSHORE FUNDS

#### *Inheritance Tax Act 1984 (c. 51)*

- 161 The Inheritance Tax Act 1984 is amended as follows.
- 162 In section 174(1)(a) (income tax and unpaid inheritance tax) for “made under section 41(1) of the Finance Act 2008” substitute “ under section 354(1) of the Taxation (International and Other Provisions) Act 2010 ”.

#### *Taxation of Chargeable Gains Act 1992 (c. 12)*

- 163 TCGA 1992 is amended as follows.
- 164 In section 108(1)(c) (identification of relevant securities for corporation tax) for “made under section 41(1) of the Finance Act 2008” substitute “ under section 354(1) of TIOPA 2010 ”.
- 165 In section 212(1)(b) (annual deemed disposal of unit trusts etc) for “section 40A of the Finance Act 2008” substitute “ section 355 of TIOPA 2010 ”.
- 166 In Schedule 7AD (gains of insurance company from venture capital investment partnership) in paragraph 7(1) for “made under section 41(1) of the Finance Act 2008” substitute “ under section 354(1) of TIOPA 2010 ”.

#### *Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 167 ITTOIA 2005 is amended as follows.
- 168 In section 378A(7) (offshore fund distributions) for “section 40A of FA 2008” substitute “ section 354 of TIOPA 2010 (see sections 355 to 363 of that Act) ”.

#### *Finance Act 2008 (c. 9)*

- 169 FA 2008 is amended as follows.
- 170 Omit sections 40A to 42A (offshore funds).

#### *Corporation Tax Act 2009 (c. 4)*

- 171 CTA 2009 is amended as follows.
- 172 In section 489 (meaning of “offshore fund etc”)—
- (a) for “Sections 40A to 40G of FA 2008” substitute “ Sections 355 to 363 of TIOPA 2010 ”, and
  - (b) for “sections 40A to 42A” substitute “ Part 8 ”.

#### *Finance Act 2009 (c. 10)*

- 173 FA 2009 is amended as follows.

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- 174 Omit paragraph 6 of Schedule 22 (restriction on regulation-making power under section 41 of FA 2008).

## PART 6

### OIL ACTIVITIES

#### *Finance Act 1980 (c. 48)*

- 175 FA 1980 is amended as follows.
- 176 In section 107(7) (transmedian fields) for “Chapter V of Part XII of the Taxes Act 1988” substitute “ Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 ”.

#### *Finance Act 1982 (c. 39)*

- 177 FA 1982 is amended as follows.
- 178 In section 134(1) (alternative valuation of ethane used for petrochemical purposes) for “Chapter V of Part XII of the Taxes Act 1988” substitute “ Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 ”.
- 179 In Schedule 19 (supplementary provisions relating to advance petroleum revenue tax) omit paragraph 10(7).

#### *Income and Corporation Taxes Act 1988 (c. 1)*

- 180 ICTA is amended as follows.
- 181 Omit section 493(1) to (6) (valuation of oil disposed of or appropriated in certain circumstances).
- 182 Omit section 495 (regional development grants).
- 183 Omit section 496 (tariff receipts and tax-exempt tariffing receipts).
- 184 Omit section 502(1) and (2) (interpretation of Chapter 5).

#### *Finance Act 1991 (c. 31)*

- 185 FA 1991 is amended as follows.
- 186 Omit sections 62 to 65 (abandonment guarantees and abandonment expenditure).

#### *Finance Act 1999 (c. 16)*

- 187 FA 1999 is amended as follows.
- 188 In section 98(7) (qualifying assets) for paragraphs (b) and (c) substitute—  
“(ba) Chapter 16A of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (oil activities).”

#### *Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 189 ITTOIA 2005 is amended as follows.

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- 190 In section 16(3) (oil extraction and related activities) for “section 502(1) of ICTA” substitute “ sections 225A and 225B ”.
- 191 In Part 2 of Schedule 4 (index of defined expressions) at the appropriate places insert—

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“abandonment guarantee (in Chapter 16A of Part 2)	section 225N(6)”
“chargeable period (in Chapter 16A of Part 2)	section 225E”
“contributing participator (in Chapter 16A of Part 2)	section 225R(3)”
“the defaulter (in Chapter 16A of Part 2)	section 225R(3)”
“default payment (in Chapter 16A of Part 2)	section 225R(3)”
“designated area (in Chapter 16A of Part 2)	section 225E”
“the guarantor (in Chapter 16A of Part 2)	section 225N(6)”
“oil (in Chapter 16A of Part 2)	section 225E”
“oil extraction activities (in Chapter 16A of Part 2)	section 225A”
“oil field (in Chapter 16A of Part 2)	section 225E”
“oil rights (in Chapter 16A of Part 2)	section 225B”
“OTA 1975 (in Chapter 16A of Part 2)	section 225E”
“participator (in Chapter 16A of Part 2)	section 225E”
“the relevant participator (in Chapter 16A of Part 2)	section 225N(6)”
“ring fence income (in Chapter 16A of Part 2)	section 225C”
“ring fence trade (in Chapter 16A of Part 2)	section 225D”

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*Income Tax Act 2007 (c. 3)*

- 192 ITA 2007 is amended as follows.
- 193 In section 80(3) (ring fence income) for “same meaning as in Chapter 5 of Part 12 of ICTA (see section 502 of that Act)” substitute “ meaning given by sections 225A and 225B of ITTOIA 2005 ”.

**PART 7**

ALTERNATIVE FINANCE ARRANGEMENTS

*Finance Act 1986 (c. 41)*

- 194 FA 1986 is amended as follows.
- 195 In section 78(7)(d) (loan capital)—
- (a) for “which fall within section 48A of the Finance Act 2005” substitute “ to which section 564G of the Income Tax Act 2007 ”, and
  - (b) after “bonds” insert “ applies ”.
- 196 In section 79 (loan capital: new provisions)—

*Status: Point in time view as at 31/12/2012.*

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- (a) in subsection (6), as it has effect by virtue of subsection (8A)(a) of that section, for “section 48A(1) of the Finance Act 2005”, in both places, substitute “ section 564G(1) of the Income Tax Act 2007 ”, and
  - (b) in subsection (8A)(b) for “section 48A of the Finance Act 2005” substitute “ section 564G of the Income Tax Act 2007 ”.
- 197 In section 99(9A) (interpretation)—
- (a) for “falling within section 48A of the Finance Act 2005” substitute “ to which section 564G of the Income Tax Act 2007 ”, and
  - (b) after “bonds” insert “ applies ”.

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 198 TCGA 1992 is amended as follows.
- 199 In section 99(2) (application of Act to unit trust schemes) for “section 99A” substitute “ sections 99A and 151W(a) ”.
- 200 In section 117 (meaning of “qualifying corporate bond”) for subsection (6D) substitute—
- “(6D) Section 151T provides for arrangements to which section 151N (alternative finance arrangements: investment bond arrangements) applies also to be a corporate bond for the purposes of this section.”
- 201 Omit section 151F (treatment of alternative finance arrangements).
- 202 In the Table in section 288(8) (interpretation), in the entry for “unit trust scheme” and “unit holder”, for “and 99A” substitute “ , 99A and 151W(a) ”.

*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 203 ITEPA 2003 is amended as follows.
- 204 In section 420(1) (meaning of securities etc) for paragraph (h) and the “and” immediately preceding it substitute “and
- (h) arrangements to which section 564G of ITA 2007 (alternative finance arrangements: investment bond arrangements) applies.”

*Finance Act 2003 (c. 14)*

- 205 FA 2003 is amended as follows.
- 206 In section 71A(8) (alternative property finance: land sold to a financial institution and leased to individual) for “section 46 of the Finance Act 2005” substitute “ section 564B of the Income Tax Act 2007 ”.
- 207 In section 72(7) (alternative property finance in Scotland: land sold to a financial institution and leased to individual) for “section 46 of the Finance Act 2005” substitute “ section 564B of the Income Tax Act 2007 ”.
- 208 In section 72A(8) (alternative property finance in Scotland: land sold to a financial institution and individual in common) for “section 46 of the Finance Act 2005” substitute “ section 564B of the Income Tax Act 2007 ”.

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209 In section 73(5)(a) (alternative property finance: land sold to a financial institution and resold to individual) for “section 46 of the Finance Act 2005” substitute “section 564B of the Income Tax Act 2007”.

210 In section 73C (alternative finance investment bonds) for “falling within section 48A of the Finance Act 2005 (alternative finance investment bonds)” substitute “to which section 564G of the Income Tax Act 2007 or section 151N of the Taxation of Chargeable Gains Act 1992 (investment bond arrangements) applies”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

211 ITTOIA 2005 is amended as follows.

212 In Part 2 of Schedule 4 (index of defined expressions) insert at the appropriate place—

“interest	section 564M of ITA 2007”
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*Finance Act 2005 (c. 7)*

213 FA 2005 is amended as follows.

214 Omit sections 46 to 47A, 48(1), 48A, 48B(1) to (5) and (9) and 49 to 57 (alternative finance arrangements).

215 In Schedule 2 (alternative finance arrangements: further provisions) omit paragraphs 1, 8 and 10 to 13.

*Finance Act 2006 (c. 25)*

216 FA 2006 is amended as follows.

217 Omit section 97 (beneficial loans to employees).

218 Omit section 98 (orders amending Chapter 5 of Part 2 of FA 2005).

*Income Tax Act 2007 (c. 3)*

219 ITA 2007 is amended as follows.

220 In section 2 (overview of Act) after subsection (10) insert—

“(10A) Part 10A is about alternative finance arrangements.”

221 In section 383(6) (relief for interest payments)—

(a) for “section 51(2) of FA 2005” substitute “section 564O”, and

(b) for “falling within section 47 of that Act” substitute “to which section 564C applies”.

222 In section 849(4) (interaction with other Income Tax Acts provisions) for the words from the beginning to “make” substitute “Section 564Q (deduction of income tax at source under this Part) makes”.

223 In Schedule 4 (index of expressions defined in that Act) insert at the appropriate place—

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“alternative finance arrangements (in Part 10A)	section 564A(2)”
“alternative finance return (in Part 10A)	sections 564I to 564L”

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*Corporation Tax Act 2009 (c. 4)*

- 224 CTA 2009 is amended as follows.
- 225 Omit section 521 (power to extend Chapter 6 of Part 6 of CTA 2009 etc to other arrangements).
- 226 Omit section 1310(5) (orders and regulations).

*Finance Act 2009 (c. 10)*

- 227 FA 2009 is amended as follows.
- 228 In section 123 (alternative finance investment bonds) for “falling within section 48A of FA 2005 (alternative finance investment bonds)” substitute “ to which section 564G of ITA 2007 or section 151N of TCGA 1992 (investment bond arrangements) applies ”.
- 229 (1) Amend Schedule 61 (alternative finance investment bonds) as follows.
- (2) In paragraph 1(1) (interpretation) in the definition of “alternative finance investment bond” for “within section 48A of FA 2005 (alternative finance investment bond: introduction)” substitute “ to which section 564G of ITA 2007 or section 151N of TCGA 1992 (investment bond arrangements) applies ”.
- (3) For paragraph 2 (issue, transfer and redemption of rights under bond not to be treated as chargeable transaction) substitute—
- “2 Section 564S of ITA 2007 (treatment of bond-holder and bond-issuer) applies for the purposes of any enactment about stamp duty land tax as it applies for the purposes of the Income Tax Acts.”
- (4) In paragraph 4(1) for “section 48B(2) of FA 2005” substitute “ section 564S of ITA 2007 ”.

**PART 8**

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 230 The Taxation of Chargeable Gains Act 1992 is amended as follows.
- 231 In section 37 (consideration chargeable to tax on income) at the end of subsection (2) add—
- “See also section 37A(4) and (5) (consideration on disposal of certain leases).”

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*Finance Act 1997 (c. 16)*

- 232 (1) FA 1997 is amended as follows.
- (2) Omit section 82 (finance leases and loans).
- (3) In Schedule 12 (leasing arrangements: finance leases and loans) omit paragraphs 1 to 7, 9 to 17 and 20 to 30.

*Capital Allowances Act 2001 (c. 2)*

- 233 The Capital Allowances Act 2001 is amended as follows.
- 234 In section 60(1)(c) (meaning of “disposal receipt”) for “paragraph 11” to “sum)” substitute “ section 614BS of ITA 2007 ”.
- 235 In section 420(b) (meaning of “disposal receipt”) for “paragraph 11” to “sum)” substitute “ section 614BS of ITA 2007 ”.
- 236 In section 476(1)(b) (disposal value of patent rights) for “paragraph 11” to “sum)” substitute “ section 614BS of ITA 2007 ”.

*Income Tax Act 2007 (c. 3)*

- 237 The Income Tax Act 2007 is amended as follows.
- 238 In section 2 (overview of Act) after subsection (11) insert—
- “(11A) Part 11A is about leasing arrangements involving finance leases or loans.”
- 239 In Schedule 4 (index of defined expressions) at the appropriate places insert—
- 
- |  |   |
|--|---|
| “accountancy rental earnings (in Part 11A)                       | section 614AB(1)”   |
| “accountancy rental excess (in Chapter 2 of Part 11A)            | section 614BH(1) to (4)”  |
| “accountancy rental excess (in Chapter 3 of Part 11A)            | section 614BH(1) to (4), as it has effect as a result of section 614CD” |
| “asset (in Part 11A)   | section 614DG”  |
| “asset representing the leased asset (in Part 11A)               | section 614DD”  |
| “cumulative accountancy rental excess (in Chapter 2 of Part 11A) | section 614BH(5)”   |
| “cumulative accountancy rental excess (in Chapter 3 of Part 11A) | section 614BH(5), as it has effect as a result of section 614CD”        |
| “cumulative normal rental excess (in Chapter 2 of Part 11A)      | section 614BJ(5)”   |
| “cumulative normal rental excess (in Chapter 3 of Part 11A)      | section 614BJ(5), as it has effect as a result of section 614CD”        |
| “the current lessor (in Part 11A)                                | section 614DG”  |
| “finance lessor (in Part 11A)                                    | section 614DG”  |
| “for accounting purposes (in Part 11A)                           | section 614DG”  |



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“lease (in Part 11A)	section 614DG”
“the leasing arrangements (in Part 11A)	section 614DG”
“the lessee (in Part 11A)	section 614DG”
“the lessor (in Part 11A)	section 614DG”
“major lump sum (in Part 11A)	section 614BC(5)”
“normal rent (in Part 11A)	section 614AA”
“normal rental excess (in Chapter 2 of Part 11A)	section 614BJ(1) to (4)”
“normal rental excess (in Chapter 3 of Part 11A)	section 614BJ(1) to (4), as it has effect as a result of section 614CD”
“pay (in Part 11A)	section 614DG”
“period of account (in Part 11A)	section 614DB(1) to (3)”
“post-25 November 1996 scheme (in Part 11A)	section 614D(1)(b)”
“pre-26 November 1996 scheme (in Part 11A)	section 614D(1)(a)”
“related period of account (in Part 11A)	section 614DB(5)”
“related tax year (in Part 11A)	section 614DB(4)”
“rent (in Part 11A)	section 614DG”
“the rental earnings (in Part 11A)	section 614AC”
“sum (in Part 11A)	section 614DG”

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## PART 9

### SALE AND LEASE-BACK ETC

#### *Income and Corporation Taxes Act 1988 (c. 1)*

- 240 ICTA is amended as follows.
- 241 Omit section 24 (which has come to apply only for the interpretation of section 780 of ICTA).
- 242 Omit sections 779 to 785 (sale and lease-back etc).

#### *Taxation of Chargeable Gains Act 1992 (c. 12)*

- 243 TCGA 1992 is amended as follows.
- 244 In Schedule 8 (leases) in paragraph 9(2) (gain reduced by amount on which income tax charged by reference to a capital sum) for “section 785 of the Taxes Act” substitute “ section 681DM of ITA 2007 ”.

#### *Broadcasting Act 1996 (c. 55)*

- 245 The Broadcasting Act 1996 is amended as follows.

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- 246 (1) Amend Schedule 7 (transfer schemes: taxation provisions) as follows.
- (2) In paragraph 22(1) after “reliefs” insert “, and sections 681AD and 681AE of the Income Tax Act 2007 (which make corresponding provision),”.
- (3) In paragraph 22(2)—
- (a) before “and” insert “ or section 681AA or 681AB of the Income Tax Act 2007”, and
- (b) after the second occurrence of “2010” (which is inserted by CTA 2010) insert “ or section 681AM of the Income Tax Act 2007”.
- (4) In paragraph 23(1) after “consideration” insert “, and Chapter 2 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision),”.
- (5) In paragraph 23(3) before “and sub-paragraph (2)” insert “, or section 681BA of the Income Tax Act 2007,”.
- (6) In paragraph 24(1) after “others” insert “ and Chapter 4 of Part 12A of the Income Tax Act 2007 (which makes corresponding provision),”.
- (7) In paragraph 24(2) for “leases: special cases” substitute “ lease of trading asset), and section 681CC of the Income Tax Act 2007 (which makes corresponding provision),”.
- (8) For paragraph 24(3) substitute—
- “(3) In sub-paragraph (1)—
- “lease” has the meaning given by section 884 of the Corporation Tax Act 2010 or section 681DN of the Income Tax Act 2007, and
- “relevant asset” has the meaning given by section 885 of the Corporation Tax Act 2010 or section 681DO of the Income Tax Act 2007.
- (4) In sub-paragraph (2)—
- “lease” has the meaning given by section 868 of the Corporation Tax Act 2010 or section 681CF of the Income Tax Act 2007, and
- “relevant asset” has the meaning given by section 869 of the Corporation Tax Act 2010 or section 681CG of the Income Tax Act 2007.”

*Finance Act 1999 (c. 16)*

- 247 FA 1999 is amended as follows.
- 248 In section 97(6), in the definition of “lease”, for “sections 781 to 784 of the Taxes Act 1988” substitute “ Chapter 3 of Part 19 of CTA 2010 (see section 868) ”.

*Greater London Authority Act 1999 (c. 29)*

- 249 The Greater London Authority Act 1999 is amended as follows.
- 250 (1) Amend paragraph 13 of Schedule 33 (taxation provisions: public-private partnership agreements: sale and leasebacks) as follows.
- (2) In sub-paragraph (1) before “shall” insert “, nor any of sections 681AD, 681AE and 681CC of the Income Tax Act 2007 (which make corresponding provision),”.

*Status: Point in time view as at 31/12/2012.*

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- (3) In sub-paragraph (2) for “that Act” substitute “ the Corporation Tax Act 2010 and Chapter 4 of Part 12A of the Income Tax Act 2007 ”.

*Transport Act 2000 (c. 38)*

- 251 The Transport Act 2000 is amended as follows.
- 252 In paragraph 15 of Schedule 7 (transfer schemes: tax: leased assets)—
- (a) in sub-paragraph (1) before “(assets” insert “ or Chapter 4 of Part 12A of the Income Tax Act 2007 ”, and
  - (b) in sub-paragraph (2) for “that Act” substitute “ the Corporation Tax Act 2010 and section 681DI of the Income Tax Act 2007 ”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

- 253 ITTOIA 2005 is amended as follows.
- 254 (1) Amend section 49 (car or motor cycle hire: supplementary) as follows.
- (2) In subsection (2)(a) omit “(see subsection (3))”.
  - (3) For subsections (3) to (5) substitute—  
“(3) For this purpose “hire-purchase agreement” has the meaning given by section 998A of ITA 2007.”
- 255 In section 100(4) (meaning of sale and lease-back arrangement) after “as is described in” insert “ section 681AA(1) or (2), 681AB(1) or (2) or 681BA of ITA 2007 or ”.

*Income Tax Act 2007 (c. 3)*

- 256 ITA 2007 is amended as follows.
- 257 In section 2 (overview of Act) after subsection (12) insert—  
“(12A) Part 12A is about sale and lease-back etc.”
- 258 In section 989 at the appropriate place insert—  
““hire-purchase agreement” is to be read in accordance with section 998A,”.
- 259 After section 998 insert—

**“998A Meaning of “hire-purchase agreement”**

- (1) This section applies for the purposes of the provisions of the Income Tax Acts which apply this section.
- (2) A hire-purchase agreement is an agreement in whose case each of conditions A to C is met.
- (3) Condition A is that under the agreement goods are bailed (or in Scotland hired) in return for periodical payments by the person to whom they are bailed (or hired).

*Status: Point in time view as at 31/12/2012.*

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- (4) Condition B is that under the agreement the property in the goods will pass to the person to whom they are bailed (or hired) if the terms of the agreement are complied with and one or more of the following events occurs—
- (a) the exercise of an option to purchase by that person,
  - (b) the doing of another specified act by any party to the agreement,
  - (c) the happening of another specified event.
- (5) Condition C is that the agreement is not a conditional sale agreement.
- (6) In subsection (5) “conditional sale agreement” means an agreement for the sale of goods under which—
- (a) the purchase price or part of it is payable by instalments, and
  - (b) the property in the goods is to remain in the seller (even though they are to be in the possession of the buyer) until conditions specified in the agreement are met (whether as to the payment of instalments or otherwise).”

260 (1) Amend section 1016(2) (table of provisions to which section applies) as follows.

(2) In Part 2 of the table at the appropriate place insert—

“Section 681BB(8) and (9)	New lease after assignment or surrender”
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(3) In Part 2 of the table at the appropriate place insert—

“Section 681DD	Leased assets: capital sums”
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(4) In Part 3 of the table omit the entry for section 780(3A)(a) of ICTA.

(5) In Part 3 of the table omit the entry for section 781(1) of ICTA.

261 In Schedule 4 (index of defined expressions) at the appropriate places insert—

“associated (in Chapter 1 of Part 12A)	section 681AM”
“associates (in Chapter 4 of Part 12A)	section 681DL”
“capital sum (in Chapter 4 of Part 12A)	section 681DM”
“deduction by way of relevant income tax relief (in Chapter 1 of Part 12A)	section 681AC(1)”
“deduction by way of relevant income tax relief (in Chapter 2 of Part 12A)	section 681BK”
“deduction by way of relevant tax relief (in Chapter 4 of Part 12A)	section 681DP”
“dispositions of interests in land outside the United Kingdom (in Chapter 1 of Part 12A)	section 681AN”
“interests in land outside the United Kingdom (in Chapter 1 of Part 12A)	section 681AN”
“lease (in Chapter 1 of Part 12A)	section 681AL(2)”
“lease (in Chapter 2 of Part 12A)	section 681BM(2), (3)”

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“lease (in Chapter 3 of Part 12A)	section 681CF”
“lease (in Chapter 4 of Part 12A)	section 681DN”
“lessee (in Chapter 2 of Part 12A)	section 681BM(4)”
“lessor (in Chapter 2 of Part 12A)	section 681BM(4)”
“linked (in relation to a person) (in Chapter 2 of Part 12A)	section 681BL”
“relevant asset (in Chapter 3 of Part 12A)	section 681CG”
“relevant asset (in Chapter 4 of Part 12A)	section 681DO”
“relevant deduction from earnings (in Chapter 1 of Part 12A)	section 681AC(2)”
“rent (in Chapter 1 of Part 12A)	section 681AL(3), (4)”
“rent (in Chapter 2 of Part 12A)	section 681BM(5)”
“sum obtained in respect of an interest in an asset (in Chapter 4 of Part 12A)	section 681DG”
“sum obtained in respect of the lessee's interest in a lease of an asset (in Chapter 4 of Part 12A)	section 681DH”.

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*Corporation Tax Act 2009 (c. 4)*

- 262 CTA 2009 is amended as follows.
- 263 In section 97(4) (meaning of sale and lease-back arrangement) after “as is described in” insert “ section 681AA(1) or (2) or 681AB(1) or (2) of ITA 2007 or ”.

**PART 10**

FACTORING OF INCOME ETC

*Income and Corporation Taxes Act 1988 (c. 1)*

- 264 ICTA is amended as follows.
- 265 Omit sections 774A to 774G (factoring of income receipts etc).
- 266 Omit section 786 (transactions associated with loans or credit).

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 267 TCGA 1992 is amended as follows.
- 268 (1) Amend section 263E (structured finance arrangements) as follows.
- (2) In subsection (1)(a) for “section 774B of the Taxes Act” substitute “ section 809BZB or 809BZC of ITA 2007 ”.
- (3) In subsection (6) in the definition of “the borrower” for “section 774A of the Taxes Act” substitute “ the defining section ”.
- (4) In subsection (6) after the definition of “the borrower” insert—

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““the defining section” in relation to a structured finance arrangement—

- (a) means section 809BZA of ITA 2007 if it is section 809BZB or 809BZC of ITA 2007 that applies in relation to the arrangement, and
- (b) means section 758 of CTA 2010 if it is section 759 or 760 of CTA 2010 that applies in relation to the arrangement.”.

- (5) In subsection (6) in the definition of “the lender” for “that section” substitute “ the defining section ”.
- (6) In subsection (6) in the definition of “security” for “subsection (2)(c) and (d) of that section” substitute “ subsection (2)(b) and (c) of the defining section ”.

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

269 ITTOIA 2005 is amended as follows.

270 After section 281 insert—

**“281A Sums to which sections 277 to 281 do not apply**

- (1) This section applies if a grant of a lease constitutes a disposal of an asset for the purposes of section 809BZA(2)(b) or 809BZF(2)(a) of ITA 2007 (disposals under finance arrangements).
- (2) Sections 277 to 281 do not apply in relation to a premium paid in respect of the grant.”

*Income Tax Act 2007 (c. 3)*

271 ITA 2007 is amended as follows.

272 In section 2(13) (overview of Part 13) omit the “or” after paragraph (e), and after paragraph (f) insert—

- “(g) finance arrangements (Chapter 5B),
- (h) loan or credit transactions (Chapter 5C).”.

273 For section 809AZE (transfers of income streams: exception for transfer by way of security) substitute—

**“809AZE Exception: transfer by way of security**

- (1) This Chapter does not apply if—
  - (a) the consideration for the transfer is the advance under a type 1 finance arrangement, and
  - (b) the transferor is, or is a member of a partnership which is, the borrower in relation to the arrangement.
- (2) This Chapter does not apply if—
  - (a) the consideration for the transfer is the advance under a type 2 finance arrangement or a type 3 finance arrangement, and
  - (b) the transferor is a member of the partnership which receives that advance under the arrangement.
- (3) In this section—

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“type 1 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZA,

“type 2 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZF, and

“type 3 finance arrangement” has the meaning given for the purposes of Chapter 5B by section 809BZJ.”

274 (1) Amend section 1016(2) (table of provisions to which section applies) as follows.

(2) In Part 2 of the table at the appropriate place insert—

“Section 809CZC(2)	Income transferred under a loan or credit transaction”
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(3) In Part 3 of the table omit the entry for section 786(5)(a) of ICTA.

275 In Schedule 4 (index of defined expressions) at the appropriate places insert—

“accounts (in Chapter 5B of Part 13)	section 809BZQ”
“arrangements (in Chapter 5B of Part 13)	section 809BZR”
“disposal of an asset (in Chapter 5B of Part 13)	section 809BZS(3)”
“payments in respect of an asset (in Chapter 5B of Part 13)	section 809BZS(4)”
“person involved in a relevant change (in Chapter 5B of Part 13)	section 809BZG(5)”
“person receiving an asset (in Chapter 5B of Part 13)	section 809BZS(2)”
“relevant change in relation to a partnership (in Chapter 5B of Part 13)	section 809BZG”
“type 1 finance arrangement (in Chapter 5B of Part 13)	section 809BZA”
“type 2 finance arrangement (in Chapter 5B of Part 13)	section 809BZF”
“type 3 finance arrangement (in Chapter 5B of Part 13)	section 809BZJ”.

## PART 11

### UK REPRESENTATIVES OF NON-UK RESIDENTS

#### *Finance Act 1995 (c. 4)*

276 FA 1995 is amended as follows.

277 Omit section 126 (UK representatives of non-residents).

278 Omit section 127 (persons not treated as UK representatives).

279 Omit Schedule 23 (obligations etc imposed on UK representatives).

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*Income Tax Act 2007 (c. 3)*

- 280 ITA 2007 is amended as follows.
- 281 In section 2(14) (overview of Act)—
- (a) omit the “and” immediately after paragraph (b), and
- (b) after paragraph (b) insert—
- “(ba) rules about UK representatives of non-UK residents (Chapters 2B and 2C),”.
- 282 In section 813(2) (meaning of “disregarded income”) for “section 126 of, and Schedule 23 to, FA 1995 (UK representatives of non-UK residents)” substitute “Chapter 2B”.
- 283 (1) Amend section 817 (independent broker conditions) as follows.
- (2) In subsection (3) omit “by the broker”.
- (3) In subsection (5) for “section 126 of, and Schedule 23 to, FA 1995” substitute “Chapter 2B of this Part, or of Chapter 1 of Part 7A of TCGA 1992, ”.
- 284 In section 824 (application of 20% rule to collective investment schemes) at the end of subsection (2) insert “ (so far as the transaction is one in respect of which such amounts so arise or accrue) ”.
- 285 (1) Amend section 1014(2) (orders and regulations to which section does not apply) as follows.
- (2) Omit paragraph (ba).
- (3) In paragraph (g)—
- (a) omit the word “and” at the end of sub-paragraph (iib), and
- (b) after that sub-paragraph insert—
- “(iic) section 835S(4) (meaning of “investment transaction”), and”.
- 286 In Schedule 4 (index of defined expressions) at the appropriate places insert—

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“beneficial entitlement (in Chapter 2B of Part 14)	section 835O(4)”
“branch or agency (in Chapter 2B of Part 14)	section 835S(2)”
“independent agent (in Chapter 2C of Part 14)	section 835Y”
“the independent broker conditions (in Chapter 2B of Part 14)	section 835L”
“the independent investment manager conditions (in Chapter 2B of Part 14)	section 835M”
“investment manager (in Chapter 2B of Part 14)	section 835S(3)”
“investment transaction (in Chapter 2B of Part 14)	section 835S(4)”
“qualifying period (in Chapter 2B of Part 14)	section 835O(2)”
“relevant disregarded income (in Chapter 2B of Part 14)	section 835O(3)”

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## PART 12

### AMENDMENTS FOR PURPOSES CONNECTED WITH OTHER TAX LAW REWRITE ACTS

#### *Solicitors (Northern Ireland) Order 1976 (S.I. 1976/582 (N.I. 12))*

- 287 The Solicitors (Northern Ireland) Order 1976 is amended as follows.
- 288 In paragraph 38(3) of Schedule 1A for the words from the beginning to “1988” substitute “In sections 748(4), 749 and 771(5) and (6) of the Income Tax Act 2007”.

#### *Administration of Justice Act 1985 (c. 61)*

- 289 The Administration of Justice Act 1985 is amended as follows.
- 290 In paragraph 36(3) of Schedule 2 for “749,” substitute “ 748(4), 749 and ”.

#### *Income and Corporation Taxes Act 1988 (c. 1)*

- 291 ICTA is amended as follows.
- 292 Omit section 59(3) and (4) (person answerable for tax charged in accordance with section 12 of ITTOIA 2005 on profits of markets or fairs, or on tolls, fisheries or other profits not distrainable).

#### *Broadcasting Act 1996 (c. 55)*

- 293 The Broadcasting Act 1996 is amended as follows.
- 294 (1) Amend paragraph 19 of Schedule 7 (no profit or loss by reason of a direct disposal transfer) as follows.
- (2) For the words from the beginning of the paragraph to “accrue to the BBC” substitute “ In determining for the purposes of Part 3 of the Corporation Tax Act 2009 the profits or losses of a trade or part of a trade carried on by the BBC wholly or partly in the United Kingdom, it is to be assumed that no profits or losses arise to the BBC ”.
- (3) In sub-paragraph (a) for “section 100 of the Taxes Act 1988” substitute “ section 163 of the Corporation Tax Act 2009 ”.
- (4) In the italic heading preceding the paragraph for “Case I of Schedule D” substitute “ Part 3 of the Corporation Tax Act 2009 ”.

#### *Greater London Authority Act 1999 (c. 29)*

- 295 The Greater London Authority Act 1999 is amended as follows.
- 296 In paragraph 7 of Schedule 33 (taxation provisions: revenue nature of payments under public-private partnership agreements)—
- (a) in sub-paragraph (a) for “Case I of Schedule D” substitute “ Part 3 of the Corporation Tax Act 2009 ”, and
- (b) in sub-paragraph (b) for “Case I of Schedule D” substitute “ Part 3 of the Corporation Tax Act 2009 ”.

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*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

- 297 ITEPA 2003 is amended as follows.
- 298 In section 211(2) (which refers to section 215, which in turn now refers to section 776(1) of ITTOIA 2005 in place of section 331(1) of ICTA) for “section 331 of ICTA” substitute “ section 776(1) of ITTOIA 2005 ”.
- 299 In section 215 (which now refers to section 776(1) of ITTOIA 2005 in place of section 331(1) of ICTA) in the title for “section 331 of ICTA” substitute “ section 776(1) of ITTOIA 2005 ”.
- 300 In section 331(1) (Part 5 is to be read with section 835(3) and (4) of ICTA) for “section 835(3) and (4) of ICTA” substitute “ section 25(1) to (3) of ITA 2007 ”.

*Finance Act 2004 (c. 12)*

- 301 FA 2004 is amended as follows.
- 302 (1) Amend section 318 (interpretation of Part 7) as follows.
- (2) In subsection (1)—
- (a) after the definition of “arrangements” insert—
- ““company” has the meaning given by section 1121 of the Corporation Tax Act 2010;”, and
- (b) after the definition of “tax” insert—
- ““trade” includes every venture in the nature of trade.”
- (3) Omit subsection (2).

*Finance Act 2005 (c. 7)*

- 303 FA 2005 is amended as follows.
- 304 Omit section 48B(6) to (8) (alternative finance arrangements: alternative finance investment bonds).
- 305 In Schedule 2 (alternative finance arrangements: further provisions) omit paragraph 9.

*Income Tax Act 2007 (c. 3)*

- 306 ITA 2007 is amended as follows.
- 307 In section 887(4) (industrial and provident society payments) for “section 486(7) of ICTA” substitute “ section 500(2) of CTA 2009 ”.

*Corporation Tax Act 2009 (c. 4)*

- 308 CTA 2009 is amended as follows.
- 309 Before section 1 insert—

**Overview of the Corporation Tax Acts**

“A1 (1) The main Acts relating to corporation tax are—

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- (a) this Act (which covers the ground described in section 1),
  - (b) CTA 2010 (which covers the ground described in section 1 of that Act), and
  - (c) TCGA 1992 (so far as relating to chargeable gains accruing to a company in respect of which the company is chargeable to corporation tax).
- (2) Enactments relating to corporation tax are also contained in other Acts: see in particular—
- (a) Chapter 1 of Part 12 of ICTA (insurance companies),
  - (b) Chapter 4 of Part 17 of that Act (controlled foreign companies),
  - (c) Schedule 18 to FA 1998 (company tax returns, assessments and related matters),
  - (d) Schedule 22 to FA 2000 (tonnage tax),
  - (e) CAA 2001 (allowances for capital expenditure),
  - (f) Part 2 of TIOPA 2010 (double taxation relief),
  - (g) Parts 4 and 5 of that Act (transfer pricing and advance pricing agreements),
  - (h) Part 6 of that Act (tax arbitrage),
  - (i) Part 7 of that Act (tax treatment of financing costs and income), and
  - (j) Part 8 of that Act (offshore funds).
- (3) Schedule 1 to the Interpretation Act 1978 defines “the Corporation Tax Acts” as the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating to income tax).”
- 310 In section 39(2) (profits of mines, quarries and other concerns) for “clause” substitute “ section ”.
- 311 In section 1269 (interpretation of sections 1267 and 1268) in the title for “clauses” substitute “ sections ”.
- 312 In paragraph 75 of Schedule 2 (transitional provision and savings: investment bond arrangements) at the end insert—
- “(5) So far as section 519(2) has effect for income tax or capital gains tax purposes in relation to the disposal after 6 April 2007 of investment bond arrangements (whenever entered into), it is treated as always having had effect.”

## PART 13

### GENERAL

#### *Taxes Management Act 1970 (c. 9)*

- 313 TMA 1970 is amended as follows.
- 314 In section 118(1) after the definition of “the 1992 Act” insert—
- ““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010.”.

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*Income and Corporation Taxes Act 1988 (c. 1)*

315 ICTA is amended as follows.

316 In section 831(3) (interpretation of ICTA) after the definition of “the Management Act” insert—

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;”.

*Taxation of Chargeable Gains Act 1992 (c. 12)*

317 TCGA 1992 is amended as follows.

318 (1) Amend section 287 (powers to make orders or regulations under enactments relating to the taxation of chargeable gains) as follows.

(2) In subsection (1) (powers to be exercisable by statutory instrument) for “subsection (2)” substitute “ subsections (2) and (2A) ”.

(3) After subsection (2) insert—

“(2A) Subsection (1) above shall not apply in relation to any power conferred by TIOPA 2010 (see instead section 372 of that Act).”

319 In section 288(1) (interpretation) after the definition of “the Taxes Act” insert—

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;”.

*Finance Act 1998 (c. 36)*

320 FA 1998 is amended as follows.

321 (1) Amend Schedule 18 (company tax returns etc) as follows.

(2) In paragraph 25(1) (scope of enquiries) for the words from “a transfer pricing notice” to “arbitrage)” substitute “ a notice within sub-paragraph (3) ”.

(3) In paragraph 25 after sub-paragraph (2) insert—

“(3) A notice is within this sub-paragraph if it is—

- (a) a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses),
- (b) a notice under section 81(2) of TIOPA 2010 (schemes and arrangements designed to increase relief),
- (c) a transfer pricing notice under section 168(1) of TIOPA 2010 (provision not at arm's length: medium-sized enterprise), or
- (d) a notice under section 232 or 249 of TIOPA 2010 (avoidance involving tax arbitrage).”

(4) In paragraph 42(2A) (disapplication of restrictions on power to make discovery assessment or determination) for the words after “return, a notice” substitute “ within sub-paragraph (4). ”

(5) In paragraph 42 after sub-paragraph (3) insert—

“(4) A notice is within this sub-paragraph if it is—

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- (a) a notice under section 184G or 184H of the Taxation of Chargeable Gains Act 1992 (avoidance involving capital losses),
- (b) a notice under section 81(2) of TIOPA 2010 (schemes and arrangements designed to increase relief), or
- (c) a notice under section 232 or 249 of TIOPA 2010 (avoidance involving tax arbitrage).”

(6) After paragraph 97 insert—

*“Meaning of TIOPA 2010*

97A In this Schedule “TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010.”

(7) In the list in paragraph 98 after the entry for “tax payable” insert—

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“TIOPA 2010	paragraph 97A”.
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*Income Tax (Earnings and Pensions) Act 2003 (c. 1)*

322 ITEPA 2003 is amended as follows.

323 In Part 1 of Schedule 1 (abbreviations of Acts etc) after the entry for CTA 2010 (which is inserted by CTA 2010) insert—

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“TIOPA 2010	The Taxation (International and Other Provisions) Act 2010”.
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*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

324 ITTOIA 2005 is amended as follows.

325 In Part 1 of Schedule 4 (abbreviations of Acts) after the entry for CTA 2010 (which is inserted by CTA 2010) insert—

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“TIOPA 2010	The Taxation (International and Other Provisions) Act 2010”
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*Income Tax Act 2007 (c. 3)*

326 ITA 2007 is amended as follows.

327 In section 1014(2) (orders and regulations under the Income Tax Acts to which the section does not apply) for “and” after paragraph (f) substitute—

“(fa) TIOPA 2010 (see instead section 372 of that Act), and”.

328 In section 1017 (abbreviated references to Acts) for the “and” at the end of the definition of “TCGA 1992” substitute—

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010, and”.

*Corporation Tax Act 2009 (c. 4)*

329 CTA 2009 is amended as follows.

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330 In section 1312 (abbreviated references to Acts) after the definition of “TCGA 1992” insert—

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010,”.

*Finance Act 2009 (c. 10)*

331 FA 2009 is amended as follows.

332 In section 126(1) (abbreviated references to Acts) after the entry for TCGA 1992 insert—

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010,”.

SCHEDULE 9

Section 377

TRANSITIONALS AND SAVINGS ETC

**PART 1**

GENERAL PROVISIONS

*Continuity of the law: general*

1 The repeal of provisions and their enactment in a rewritten form by this Act does not affect the continuity of the law.

2 Paragraph 1 does not apply to any change made by this Act in the effect of the law.

3 Any subordinate legislation or other thing which—

(a) has been made or done, or has effect as if made or done, under or for the purposes of a superseded enactment so far as it applied for relevant tax purposes, and

(b) is in force or effective immediately before the commencement of the corresponding rewritten provision,

has effect after that commencement as if made or done under or for the purposes of the rewritten provision.

4 (1) Any reference (express or implied) in this Act, another enactment or an instrument or document to a rewritten provision is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding superseded enactment had effect for relevant tax purposes, a reference to the superseded enactment so far as applying for those relevant tax purposes.

(2) Any reference (express or implied) in this Act, another enactment or an instrument or document to—

(a) things done under or for the purposes of a rewritten provision, or

(b) things falling to be done under or for the purposes of a rewritten provision,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding superseded enactment had effect for relevant tax purposes,

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a reference to things done or falling to be done under or for the purposes of the superseded enactment so far as applying for those relevant tax purposes.

- 5 (1) Any reference (express or implied) in any enactment, instrument or document to a superseded enactment in its application for relevant tax purposes is to be read, so far as is required for those relevant tax purposes, as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision.
- (2) Any reference (express or implied) in any enactment, instrument or document to—
- (a) things done under or for the purposes of a superseded enactment in its application for relevant tax purposes, or
  - (b) things falling to be done under or for the purposes of a superseded enactment in its application for relevant tax purposes,
- is to be read, so far as is required for those relevant tax purposes, as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to things done or falling to be done under or for the purposes of the rewritten provision.
- 6 Paragraphs 1 to 5 have effect instead of section 17(2) of the Interpretation Act 1978 (but are without prejudice to any other provision of that Act).
- 7 Paragraphs 4 and 5 apply only so far as the context permits.

#### *General saving for old transitional provisions and savings*

- 8 (1) The repeal by this Act of a transitional or saving provision relating to the coming into force of a provision rewritten in this Act does not affect the operation of the transitional or saving provision, so far as it is not specifically rewritten in this Act but remains capable of having effect in relation to the corresponding provision of this Act.
- (2) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.
- (3) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the operation of the saving so far as it is not specifically rewritten in this Act but remains capable of having effect.

#### *Interpretation*

- 9 (1) In this Part—
- “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978),
  - “relevant tax purposes” means, in relation to a superseded enactment, tax purposes for which the enactment has been rewritten by this Act, and
  - “superseded enactment” means an earlier enactment which has been rewritten by this Act for certain tax purposes (whether it applied only for those purposes or for those and other tax purposes).
- (2) References in this Part to the repeal of a provision include references to its revocation and to its express or implied disapplication for particular tax purposes.

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## PART 2

### CHANGES IN THE LAW

- 10 (1) This paragraph applies if, in the case of any person—
- (a) a thing is done or an event occurs before 1 April 2010, and
  - (b) because of a change in the law made by this Act, the corporation tax consequences of that thing or event for the relevant period are different from what they would otherwise have been.
- (2) This paragraph also applies if, in the case of any person—
- (a) a thing is done or an event occurs before 6 April 2010, and
  - (b) because of a change in the law made by this Act, the income tax consequences of that thing or event for the relevant period are different from what they would otherwise have been.
- (3) If the person so elects, this Act applies with such modifications as may be necessary to secure that the consequences for that tax for that period are the same as they would have been if the change in the law had not been made.
- (4) In sub-paragraphs (1) and (2) “the relevant period” means—
- (a) for corporation tax purposes, any accounting period beginning before and ending on or after 1 April 2010, and
  - (b) for income tax purposes, any period of account beginning before and ending on or after 6 April 2010.
- (5) If this paragraph applies in the case of two or more persons in relation to the same thing or event, an election made under this paragraph by any one of those persons is of no effect unless a corresponding election is made by the other or each of the others.
- (6) An election under this paragraph must be made—
- (a) for corporation tax purposes, not later than 2 years after the end of the accounting period, and
  - (b) for income tax purposes, on or before the first anniversary of the 31 January following the tax year in which the period of account ends.

## PART 3

### DOUBLE TAXATION RELIEF

#### *Conversion of references to the profits tax in old arrangements*

- 11 (1) Sub-paragraph (2) applies to any arrangements—
- (a) made in relation to the profits tax (which was abolished by section 46(3) of FA 1965), and
  - (b) specified in an Order in Council made—
    - (i) under section 347 of the Income Tax Act 1952, or
    - (ii) under any earlier enactment corresponding to that section.
- (2) The arrangements have effect—
- (a) in relation to corporation tax as they are expressed to have effect in relation to the profits tax (and not as they had effect in relation to income tax), and



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- (b) in relation to income to which the charge to corporation tax on income applies, and in relation to gains to which the charge to corporation tax on chargeable gains applies, as they are expressed to have effect in relation to profits chargeable to the profits tax,  
but with the substitution of accounting periods for chargeable accounting periods.
- (3) Sub-paragraph (2) applies subject to any contrary provision contained in arrangements—
- (a) made after the passing of FA 1965 (which was passed on 5 August 1965), and
- (b) specified in an Order in Council made—
- (i) under section 347 of the Income Tax Act 1952, or
- (ii) under any later enactment corresponding to that section.
- (4) Sub-paragraph (2) applies despite section 18(5) of this Act.

*Effect in relation to capital gains tax of arrangements  
given effect before introduction of that tax*

- 12 Any arrangements specified in an Order in Council made under section 347 of the Income Tax Act 1952 before 5 August 1965, so far as they provide (in whatever terms) for relief from tax chargeable in the United Kingdom on capital gains, have effect in relation to capital gains tax.

*Double taxation arrangements to which section 11(3) applies*

- 13 Section 11(3) does not have effect in relation to arrangements made before 21 March 2000.

*Unilateral relief for underlying tax on dividends*

- 14 (1) Condition C in section 15 (credit for underlying tax on dividend paid to sub-10% associate) is not met if the reduction below the 10% limit took place before 1 April 1972.
- (2) Condition C in section 16 (credit for underlying tax on dividend paid by exchanged associate) is not met if the exchange took place before 1 April 1972.

*Time limits for claims for relief*

- 15 (1) If article 10 of the 2009 Order applies—
- (a) section 19(2)(a) (claims for relief under section 18(2) in relation to income tax or capital gains to be made by fourth anniversary of end of tax year) has effect at times before 1 April 2012 as if for “fourth anniversary of the end of” there were substituted “fifth anniversary of the 31 January next following”,
- (b) section 19(3)(a) (claims for relief under section 18(2) in relation to corporation tax to be made within 4 years) has effect at times before 1 April 2012 as if for “4” there were substituted “6”,
- (c) section 77(3)(a) (claims for relief under section 73(1) to be made within 4 years) has effect at times before 1 April 2012 as if for “four” there were substituted “6”, and
- (d) section 43D(5) of TMA 1970 (which is inserted by Part 1 of Schedule 8 and is about claims for relief under sections 2 to 6 in relation to petroleum

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revenue tax) has effect at times before 1 April 2012 as if for “4 years after the end of” there were substituted “5 years after the 31 January next following”.

- (2) In sub-paragraph (1) “the 2009 Order” means the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (S.I. 2009/403).

*Taking account of underlying tax*

- 16 In relation to distributions paid before 1 July 2009, the amount of any income or gain is not to be increased under section 31(2)(b) by so much of any underlying tax within section 31(3)(a) as represents relievable underlying tax, within the meaning of sections 806A to 806J of ICTA, arising in respect of another dividend and treated as underlying tax under those sections.

*Reduction in credit: payment by reference to foreign tax*

- 17 Section 34 does not have effect in relation to payments made before 22 April 2009.

*Credit against corporation tax on trade income: anti-avoidance*

- 18 Section 45(2) has effect in relation to a credit for foreign tax only if the credit relates to—
- (a) a payment of foreign tax on or after 22 April 2009, or
  - (b) income received on or after that date in respect of which foreign tax has been deducted at source.

*Credit against corporation tax on trade income: banks*

- 19 Section 49 has effect in relation to a credit for foreign tax only if the credit relates to—
- (a) a payment of foreign tax on or after 22 April 2009, or
  - (b) income received on or after that date in respect of which foreign tax has been deducted at source.

*Meaning of “relevant profits” in section 58*

- 20 In relation to dividends paid before 1 July 2009, section 59 has effect with the following modifications—
- (a) the omission of subsections (2) and (3),
  - (b) in subsection (4), the omission of “is not within subsection (3) but”, and
  - (c) in subsection (5), the omission of “is not within subsection (3) and”.

*Conditions for relief for underlying tax paid by company lower in dividend-paying chain*

- 21 Section 65(3)(a) applies with the omission of sub-paragraph (ii) if the dividend paid by the second company to the first company is paid before 22 April 2009.

*Application of sections 109 and 110 in relation to pre-1 October 2007 cases*

- 22 (1) Section 109 does not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section of that Act came into force before 1 October 2007.

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- (2) Section 110 does not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale before 1 October 2007.
- (3) This Act has effect with the modifications set out in sub-paragraphs (4) and (5), but those modifications—
  - (a) do not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section comes into force on or after 1 October 2007, and
  - (b) do not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale on or after 1 October 2007.
- (4) In section 108(3) for “section 109 or 110” substitute “ section 109A ”.
- (5) For sections 109 and 110 substitute—

**“109A Repo or stock-lending cases in which no disregard under section 108**

- (1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—
  - (a) at the time when the interest accrues, the company has ceased to be a party to the relationship as a result of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to the relationship, and
  - (b) that time is in the period for which those arrangements have effect.
- (2) In this section “repo or stock-lending arrangements”, in relation to a loan relationship, means (subject to subsection (3)) any arrangements consisting in or involving an agreement or series of agreements under which provision is made—
  - (a) for the transfer from one person (“A”) to another of any rights under the relationship, and
  - (b) for A subsequently to be or become entitled, or required—
    - (i) to have the same or equivalent rights transferred to A, or
    - (ii) to have rights in respect of benefits accruing in respect of the relationship on redemption.
- (3) Arrangements are not repo or stock-lending arrangements for the purposes of this section if they are excluded from section 730A of ICTA by section 730A(8) of ICTA.
- (4) For the purposes of subsection (2) rights under a loan relationship are equivalent to rights under another loan relationship if they entitle the holder of an asset representing the relationship—
  - (a) to the same rights against the same persons as to capital, interest and dividends, and
  - (b) to the same remedies for the enforcement of those rights, despite any difference in the total nominal amounts of the assets, in the form in which they are held or in the manner in which they can be transferred.
- (5) In this section—

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- (a) “the initial transfer”, in relation to any repo or stock-lending arrangements, is a reference to the transfer mentioned in subsection (2)(a), and
- (b) a reference to the period for which repo or stock-lending arrangements have effect is a reference to the period from the making of the initial transfer until whichever is the earlier of the following—
  - (i) the discharge of the obligations arising by virtue of the entitlement or requirement mentioned in subsection (2)(b), or
  - (ii) the time when it becomes apparent that the discharge of those obligations will not take place.”

*Income increased by amounts paid by reference to foreign tax for which deduction allowed*

- 23        Section 112(3) does not have effect in relation to payments made before 22 April 2009.

*Offshore fund treated after 1 December 2009 as distributing fund under repealed Chapter 5 of Part 17 of ICTA*

- 24        In paragraph 5(4)(b) of Schedule 27 to ICTA (offshore funds: distributing funds) as it has effect as a result of paragraph 3 of Schedule 1 to the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), the reference to section 811 of ICTA is to be treated as a reference to section 112 of this Act.

*Limited effect of amendments of sections 806A to 806J of ICTA*

- 25        The amendments in sections 806A to 806J of ICTA that are made by Part 1 of Schedule 8 have effect only in relation to distributions paid before 1 July 2009.

*Interpretative rules saved for the purposes of applying sections 806A to 806K of ICTA to distributions paid before 1 July 2009*

- 26        (1) Despite their repeal by this Act, the saved rules have effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—
- (a) before 1st July 2009, but
  - (b) in accounting periods ending on or after 1st April 2010.
- (2) In this paragraph “the saved rules” means the following provisions of ICTA—
- (a) section 788(4),
  - (b) in section 788(5), the first two sentences,
  - (c) section 790(12), and
  - (d) section 792.
- (3) The saved rules, so far as having effect as mentioned in sub-paragraph (1), have effect with the following modifications.
- (4) Section 788(4) of ICTA has effect as if for “by virtue of this section” there were substituted “under section 2(1) of TIOPA 2010”.

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- (5) In section 788(5) of ICTA the first sentence has effect as if for the words before “any amount of tax” there were substituted “ For the purposes of Chapter 2 of this Part in its application to relief under sections 2 and 6 of TIOPA 2010, but subject to section 31(4) of TIOPA 2010, ”.
- (6) Section 790(12) of ICTA has effect as if for the words from the beginning to “unilateral relief,” there were substituted “ In Chapter 2 of this Part in its application to relief under section 18(1)(b) and (2) of TIOPA 2010, ”.
- (7) Section 792(1) of ICTA has effect as if—
- (a) for “by virtue of section 788” (in both places) there were substituted “ under section 2(1) of TIOPA 2010 ”,
  - (b) for “Chapter 7 of Part 3 of the Finance Act 2004” there were substituted “ Part 3 of TIOPA 2010 ”, and
  - (c) for “section 790” there were substituted “ section 18(1)(b) and (2) of TIOPA 2010 ”.
- (8) Section 792 of ICTA has effect as if after subsection (3) there were (by way of relocation of provisions of section 790(3) of ICTA) inserted—
- “(4) Any expression in this Chapter which imports a reference to relief under arrangements for the time being having effect under section 2(1) of TIOPA 2010 shall be deemed to import also a reference to unilateral relief.”

*Repealed references to Part 18 of ICTA saved for purposes of sections 806A to 806K of ICTA*

- 27 (1) Sub-paragraph (2) has effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—
- (a) before 1st July 2009, but
  - (b) in accounting periods ending on or after 1st April 2010.
- (2) The reference to Part 2 of this Act contained in each of the provisions mentioned in sub-paragraph (3) is to be treated as including a reference to Part 18 of ICTA.
- (3) The provisions are—
- (a) paragraph 4(2) of Schedule 26 to ICTA (controlled foreign companies: dividends), and
  - (b) sections 140H(3), 140I(3) and 140J(3) of TCGA 1992 (foreign tax not charged as a result of Mergers Directive to be treated as charged).

## PART 4

### TRANSFER PRICING

*Transfer pricing: meaning of potential advantage*

- 28 Section 155(6)(b) does not have effect in relation to distributions paid before 1 July 2009.

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## PART 5

### ADVANCE PRICING AGREEMENTS

- 29 (1) An agreement made before 27 July 1999 cannot have effect as an advance pricing agreement for the purposes of Part 5.
- (2) Section 218(1)(c) (agreement must contain declaration that it is made for the purposes of section 218) applies in relation to an agreement made before 1 April 2010 as if after “this section” there were inserted “ or a declaration that it is made for the purposes of section 85 of FA 1999 ”.

## PART 6

### TAX AVOIDANCE (ARBITRAGE)

*Arbitrage: contributions to capital of UK resident companies before 16 March 2005*

- 30 Sections 249 to 254 (tax arbitrage: receipt notices) do not apply in relation to any contribution to the capital of a UK resident company made before 16 March 2005.

## PART 7

### TAX TREATMENT OF FINANCING COSTS AND INCOME

*Periods of account in relation to which Part 7 does not have effect*

- 31 (1) Part 7 of this Act does not have effect in relation to periods of account of the worldwide group that begin before 1 January 2010 (but see also sub-paragraphs (2) and (3)).
- (2) Sub-paragraph (3) applies in relation to a period of account of the worldwide group (“the relevant period of account”) if—
- (a) the ultimate parent of the group changes the date to which financial statements of the group are drawn up,
  - (b) as a result of the change, the relevant period of account—
    - (i) begins before 1 January 2010, and
    - (ii) includes a period that would, if the change had not been made, have fallen within a period of account beginning on or after that date, and
  - (c) the main purpose, or one of the main purposes, of the ultimate parent of the group in making the change is to secure that the first period of account in relation to which Part 7 has effect does not include any period falling within the relevant period of account.
- (3) The relevant period of account is treated for the purposes of sub-paragraph (1) as not beginning before 1 January 2010.

*Exclusion of certain debits and credits*

- 32 (1) An amount that would, apart from this paragraph, meet condition A, B or C in section 313 (definition of “financing expense amount”) does not meet that condition

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if it is a debit that, but for a relevant enactment, would be brought into account for corporation tax purposes in an accounting period beginning before 1 January 2010.

- (2) For this purpose the following are “relevant enactments”—
- (a) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
  - (b) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities),
  - (c) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities), and
  - (d) regulation 3A of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271) (prescribed debits and credits brought into account over prescribed period).
- (3) An amount that would, apart from this paragraph, meet condition A, B <sup>F158</sup>, C or D] in section 314 (definition of “financing income amount”) does not meet that condition if it is a credit that, but for the regulation mentioned in sub-paragraph (2)(d), would be brought into account for corporation tax purposes in an accounting period beginning before 1 January 2010.

#### Textual Amendments

**F158** Words in Sch. 9 para. 32(3) substituted (retrospectively) by Finance (No. 3) Act 2010 (c. 33), Sch. 5 paras. 34, 36(1)

## PART 8

### OFFSHORE FUNDS

#### *Restriction on regulation-making power under section 354*

- 33 (1) Regulations under section 354 may not make provision about the treatment of a person in respect of any rights in an affected offshore fund that are acquired by the person—
- (a) before 1 December 2009, or
  - (b) in accordance with sub-paragraph (3).
- (2) Sub-paragraph (1) is subject to paragraph 34.
- (3) Rights are acquired by a person in accordance with this sub-paragraph if—
- (a) the rights are acquired by the person in accordance with a legally enforceable agreement in writing that was entered into by the person before 30 April 2009,
  - (b) in the case of a conditional agreement, the conditions are satisfied before that date, and
  - (c) the agreement is not varied on or after that date.
- (4) For the purposes of this paragraph rights of a person in a fund are rights in an affected offshore fund if—
- (a) the fund is an offshore fund within the meaning of section 354, but

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- (b) on the date on which the person acquired them, the fund was not an offshore fund within the meaning of Chapter 5 of Part 17 of ICTA.
- 34 Paragraph 33 does not prevent regulations under section 354 making—
- (a) provision for a person to elect to be treated in accordance with the regulations in respect of rights referred to in that paragraph, or
- (b) provision that does not increase the person's liability to tax in respect of such rights.

## PART 9

### OIL ACTIVITIES

#### *Regional development grants*

- 35 In relation to periods of account (within the meaning given by section 6 of CAA 2001) beginning before 6 April 2011—
- (a) section 225K(3)(b) of ITTOIA 2005 has effect as if—
- (i) “ , 3 ” were inserted after “Part 2”, and
- (ii) “ , industrial buildings ” were inserted after “machinery”, and
- (b) section 225L(3) and (7) of that Act have effect as if “ , 3 ” were inserted after “Part 2”.

#### *Reimbursement by defaulter in respect of certain abandonment expenditure*

- 36 (1) If article 10 of the 2009 Order applies, section 225T(5) of ITTOIA 2005 has effect at times before 1 April 2012 as if for “4” there were substituted “ 6 ”.
- (2) In sub-paragraph (1) “the 2009 Order” means the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (S.I. 2009/403).

## PART 10

### ALTERNATIVE FINANCE ARRANGEMENTS

#### *Alternative finance arrangements entered into before certain dates etc*

- 37 (1) The alternative finance provisions do not apply to purchase and resale arrangements entered into before 6 April 2005 or diminishing shared ownership arrangements entered into before the relevant date.
- (2) If deposit arrangements, profit share agency arrangements or investment bond arrangements were entered into before the relevant date, the alternative finance provisions only apply if alternative finance return is payable under the arrangements on or after the relevant date and then—
- (a) apply for the purposes of income tax in relation to payments of alternative finance return under the arrangements to a person other than a company on or after the relevant date (so far as relevant to the tax year 2010-11 and subsequent tax years), and



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- (b) if a company is a party to the arrangements, apply in relation to the company in respect of the arrangements with effect from the relevant date (so far as relevant to those tax years or, as the case may be, any accounting period ending on or after 1 April 2010).
- (3) Sub-paragraph (2) is subject to sub-paragraph (4).
- (4) For the purposes of income tax and capital gains tax in relation to the disposal after 6 April 2007 of investment bond arrangements (whenever entered into), the relevant provisions are treated as always having had effect.
- (5) An order made under section 1005 of ITA 2007 (recognised stock exchanges: designation) that includes such provision as is mentioned in section 1005(2A) may be expressed as respects that provision—
- (a) to have had effect as from 1 April 2007 for the purposes of arrangements entered into on or after that date, and
- (b) for the purposes mentioned in sub-paragraph (4) as always having had effect.
- (6) In this paragraph—
- “alternative finance provisions” means—
- (a) section 367A of ICTA 1988,
- (b) Chapter 4 of Part 4 of TCGA 1992, and
- (c) Part 10A and section 1005(2A) of ITA 2007,
- “alternative finance return” has the same meaning as in Chapter 4 of Part 4 of TCGA 1992 (see section 151S of that Act) or Chapter 10A of ITA 2007 (see section 564L of that Act),
- “deposit arrangements”, “diminishing shared ownership arrangements”, “investment bond arrangements”, “profit share agency arrangements” and “purchase and resale arrangements” have the same meaning as in Chapter 4 of Part 4 of TCGA 1992 (see section 151H(3) of that Act) or Chapter 10A of ITA 2007 (see section 564A(3) of that Act),
- “the relevant date” means—
- (a) in the case of deposit arrangements, 6 April 2005,
- (b) in the case of diminishing shared ownership arrangements or profit share agency arrangements, for income tax purposes 6 April 2006, and
- (c) in the case of investment bond arrangements, for corporation tax purposes 1 April 2007 and for income tax and capital gains tax purposes 6 April 2007, and
- “the relevant provisions” means—
- (a) for income tax purposes, sections 564G, 564L(3) to (5), and 564S to 564U of ITA 2007 and section 1005(2A) of that Act so far as it relates to section 564G of that Act, and
- (b) for capital gains tax purposes, sections 151N, 151S(3) and (4) and 151T to 151W of TCGA 1992 and section 1005(2A) of ITA 2007 so far as it relates to section 151N of TCGA 1992.

*Alternative finance arrangements not offshore funds*

38

So far as Chapter 5 of Part 17 of ICTA continues to apply for any purpose, references to section 354 of this Act in section 151W(b) of TCGA 1992, section 564U(b) of

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ITA 2007 and section 519(4)(b) of CTA 2009 are to be read for that purpose as references to that Chapter.

*Alternative finance arrangements entered into before 15 October 2009*

- 39 (1) In relation to arrangements entered into before 15 October 2009, Part 10A of ITA 2007 (alternative finance arrangements) applies with the following modifications.
- (2) In section 564B(1) (meaning of “financial institution”)—
- (a) in paragraph (e) for “, diminishing shared ownership arrangements or profit share agency arrangements” substitute “ or diminishing shared ownership arrangements ”,
  - (b) at the end of that paragraph insert “ or ”,
  - (c) omit paragraph (g) and “or” at the end of that paragraph, and
  - (d) omit paragraph (h).
- (3) In section 564F(1) (profit share agency arrangements)—
- (a) in paragraph (a) for “an agent” substitute “ a financial institution as agent ”, and
  - (b) omit paragraph (b).
- 40 (1) In relation to arrangements entered into before 15 October 2009, Chapter 4 of Part 4 of TCGA 1992 (alternative finance arrangements) applies with the following modifications.
- (2) In section 151I(1) (meaning of “financial institution”)—
- (a) in paragraph (e) for “, diminishing shared ownership arrangements or profit share agency arrangements” substitute “ or diminishing shared ownership arrangements ”,
  - (b) at the end of that paragraph insert “ or ”,
  - (c) omit paragraph (g) and “or” at the end of that paragraph, and
  - (d) omit paragraph (h).
- (3) In section 151M(1) (profit share agency arrangements)—
- (a) in paragraph (a) for “an agent” substitute “ a financial institution as agent ”, and
  - (b) omit paragraph (b).

## PART 11

### SALE AND LEASE-BACK ETC

*New lease of land after assignment or surrender: right to new lease existed pre-22 June 1971*

- 41 (1) Sub-paragraphs (2) and (3) apply if—
- (a) each of conditions A to D in section 681BA of ITA 2007, or each of conditions A to D in section 850 of CTA 2010, is met (new lease granted to, or to person linked with, lessee under assigned or surrendered lease),
  - (b) condition E in that section is not met (condition that no right to new lease existed before 22 June 1971), and

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- (c) the rent under the new lease is payable by a person within the charge to income tax.
- (2) No part of the rent paid under the new lease is to be treated as a payment of capital.
- (3) The provisions of ITTOIA 2005 providing for deductions or allowances by way of income tax relief in respect of payments of rent apply in relation to the rent under the new lease.
- (4) Section 681BM of ITA 2007 (meaning of “rent” etc) applies for the purposes of this paragraph.

## PART 12

### FACTORING OF INCOME ETC

#### *Application of Chapter 5B of Part 13 of ITA 2007 (finance arrangements) to pre-6 June 2006 arrangements*

- 42 Chapter 5B of Part 13 of ITA 2007 (which is inserted by Schedule 5 to this Act) has no effect in relation to an arrangement made before 6 June 2006 so far as section 43B or 43D of ICTA applies to the arrangement (sections 43B and 43D of ICTA contain provision about rent factoring: their repeal by paragraph 1 of Schedule 6 to FA 2006 does not apply in relation to pre-6 June 2006 transactions).

#### *Application of section 809BZN of ITA 2007 (finance arrangements: exceptions)*

- 43 (1) In relation to a transfer before 22 April 2009, section 809BZN of ITA 2007 (which is inserted by Schedule 5 to this Act) has effect as if after subsection (1) there were inserted—
- “(1A) For the purposes of subsection (1) the effect of section 785A of ICTA (rent factoring of leases of plant or machinery) is to be disregarded.”
  - (2) If the arrangement mentioned in section 809BZN of ITA 2007 came into force before 1 October 2007, subsection (5)(b) of that section applies as if for “Schedule 13 to FA 2007 or Chapter 10 of Part 6 of CTA 2009” there were substituted “ paragraph 15 of Schedule 9 to FA 1996 ”.
  - (3) Paragraph 14(6) of Schedule 13 to FA 2007 (when an arrangement is in force) applies for the purposes of sub-paragraph (2) of this paragraph as for those of that Schedule.
  - (4) In the case of plant or machinery which is the subject of a sale and finance leaseback (as defined in section 221 of CAA 2001) where the date of the transaction (within the meaning of that section) is before 9 October 2007, section 809BZN(8) of ITA 2007 has effect as if at the end there were inserted “, but in applying that section it is to be assumed that the words “and which are not a long funding lease in the case of the lessor” were omitted from section 219(1)(b) of that Act (meaning of “finance lease”)”.
  - (5) In relation to transactions referred to in section 228A(2)(a) of CAA 2001 (as substituted by paragraph 12 of Schedule 20 to FA 2008) and entered into before 9 October 2007, section 809BZN(9) of ITA 2007 has effect as if at the end there were inserted “ with the modifications contained in section 228F of that Act ”.

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*Application of section 809CZC of ITA 2007 (income-transfer under loan or credit transaction)*

- 44 In relation to a transfer before 22 April 2009, section 809CZC(4) of ITA 2007 (which is inserted by Schedule 5 to this Act) has effect as if—
- (a) after “the person” there were inserted “ assigns, ” and
  - (b) after “it” there were inserted “ (without a sale or transfer of the property) ”.

**PART 13**

MISCELLANEOUS RELOCATIONS

*Application of sections 925A to 925F of ITA 2007 (repos)*

- 45 (1) Sections 925A to 925F and 926(1A) of ITA 2007 (which are inserted by Part 19 of Schedule 7 to this Act) do not have effect in relation to an arrangement that comes into force before 1 October 2007.
- (2) Paragraph 14(6) of Schedule 13 to FA 2007 (when an arrangement is in force) applies for the purposes of sub-paragraph (1) of this paragraph as for those of that Schedule.

SCHEDULE 10

Section 378

REPEALS AND REVOCATIONS

**PART 1**

DOUBLE TAXATION RELIEF

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Income and Corporation Taxes Act 1988 (c. 1)	Sections 788 to 799. Sections 801 to 801B. Sections 803 to 804E. Sections 804G to 806. Sections 806L to 807G. Sections 808A to 809. Section 811. Sections 815A to 815B. Section 816. In section 828(4), “791”. In Schedule 19ABA, paragraphs 9 to 11. Schedule 28AB.
Finance Act 1990 (c. 29)	In Schedule 7, paragraph 5.

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Taxation of Chargeable Gains Act 1992 (c. 12)	Sections 277 and 278.
Finance (No. 2) Act 1992 (c. 48)	Section 50. Section 51(1) and (2). Section 52.
Finance Act 1993 (c. 34)	Section 194. In section 195(3), the words “, other than section 194,”.
Finance Act 1994 (c. 9)	Section 217. In Schedule 8, paragraph 12.
Finance Act 1996 (c. 8)	In Schedule 14, paragraphs 41 to 47. In Schedule 20, paragraph 39. In Schedule 21, paragraphs 22 and 23.
Finance Act 1997 (c. 16)	Sections 90 and 91.
Finance Act 1998 (c. 36)	Section 82(2). Sections 106 and 107.
Finance Act 2000 (c. 17)	In Schedule 30, paragraphs 1, 2, 3, 4(1) to (12), 5 to 9, 11, 12, 15 to 17, 18(1), 20, 23 to 25, 27, 28 and 30.
Finance Act 2001 (c. 9)	In Schedule 27, paragraphs 1, 2 and 6.
Finance Act 2002 (c. 23)	In section 88— (a) subsection (1), (b) in subsection (2)(a), the references to sections 788(7)(a), 790(3), (5)(b), (10A)(d) and (10C), 792(1) and (3), 793A(1)(a) and (3), 795A(1)(b) and 815AA(1) of ICTA, and (c) subsection (2)(b), (c) and (f). In Schedule 25, paragraphs 54 and 55. In Schedule 27, paragraph 12(2) and (3). In Schedule 30, paragraph 5.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraph 103.
Finance Act 2003 (c. 14)	In section 153— (a) in subsection (1)(a), “790(6A)(b), 801(1A)(b), 804A(1)(a), 806L(1), (2), (4) and (5), 806M(2) to (5) and 815A(6)”, and (b) in subsection (2)(a), “794(2)(bb)”, Section 154. In Schedule 27, paragraph 1(3). In Schedule 33, paragraph 11.
Finance Act 2004 (c. 12)	Sections 107 to 115.

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	In Schedule 7, paragraph 7.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraph 34.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 321 to 323 and 325.
Finance Act 2005 (c. 7)	Section 85. Section 86(1) and (2)(a). Section 87. Section 88(3). Section 91(5). In Schedule 4, paragraph 7. Schedule 5.
Commissioners for Revenue and Customs Act 2005 (c. 11)	In Schedule 4, paragraph 37.
Finance (No. 2) Act 2005 (c. 22)	Section 43. Section 59(1).
Finance Act 2006 (c. 25)	Section 176. In Schedule 13, paragraph 24.
Income Tax Act 2007 (c. 3)	In section 26(1)(b)— (a) the entries for sections 788 and 790 of ICTA, and (b) the word “and” before the entry for sections 677 and 678 of ITTOIA 2005. In section 32— (a) the entry for section 804(5B)(a) of ICTA, and (b) the word “and” before the entry for section 682(4) of ITTOIA 2005. Section 527(2)(b). In section 1026, paragraph (g) and the “or” preceding it. In Schedule 1, paragraphs 192 to 196, 197(2), 198(2), (3), (4)(a) and (5) to (7), 199, 200(a) and 202(a).
Finance Act 2007 (c. 11)	Section 35. In Schedule 7, paragraphs 48 to 53. In Schedule 14, paragraph 10.
Income Tax Act 2007 (Amendment) (No. 3) Order 2007 (S.I. 2007/3506)	Article 3(5).
Finance Act 2008 (c. 9)	Section 57. Section 59.

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	In Schedule 17, in paragraph 10(3), paragraph (e) and the “and” preceding it.
	In Schedule 39, paragraphs 24 and 26.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraph 422(3).
Corporation Tax Act 2009 (c. 4)	In section 906(3), the word “and” after paragraph (a). In Schedule 1, paragraphs 245, 246, 247(2), (3)(a) and (4) to (8), 248 to 251, 255 to 264 and 282(2) and (3).
Finance Act 2009 (c. 10)	Sections 57, 59 and 60. In Schedule 14, paragraph 8.
Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859)	Article 4(6).

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## PART 2

### TRANSFER PRICING AND ADVANCE PRICING AGREEMENTS

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
Taxes Management Act 1970 (c. 9)	In the second column of the Table in section 98, the entry for section 86(4) of FA 1999.
Income and Corporation Taxes Act 1988 (c. 1)	Section 770A. Schedule 28AA.
Finance Act 1998 (c. 36)	Section 108(1) and (2). Sections 110 and 111. Schedule 16.
Finance Act 1999 (c. 16)	Sections 85 to 87.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 68.
Finance Act 2001 (c. 9)	In Schedule 29, paragraphs 35 and 38(1) to (3).
Finance Act 2002 (c. 23)	In Schedule 23, paragraph 21. In Schedule 27, paragraph 15.
Finance Act 2004 (c. 12)	Sections 30 to 32. Section 34(2) and (3). Sections 35 and 36. In Schedule 5, paragraphs 11 to 13.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 351 and 508.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 8, paragraph 1.

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Finance Act 2006 (c. 25)	In Schedule 13, paragraph 26.
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraph 239.
Income Tax Act 2007 (Amendment) (No. 3) Order 2007 (S.I. 2007/3506)	Article 2(4).
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraphs 162(2) and (4) and 252.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 291(2) to (4), (5)(b), (6) and (8).
Finance Act 2009 (c. 10)	In Schedule 14, paragraph 14. In Schedule 15, paragraph 96.

### PART 3

#### TAX ARBITRAGE

<i>Reference</i>	<i>Extent of repeal</i>
Finance (No. 2) Act 2005 (c. 22)	Sections 24 to 31 and Schedule 3.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 670 and 671.
Finance Act 2009 (c. 10)	In Schedule 24, paragraph 6.

### PART 4

#### TAX TREATMENT OF FINANCING COSTS AND INCOME

<i>Reference</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In the first column of the Table in section 98, the entry for regulations under Schedule 15 to FA 2009.
Finance Act 2009	Section 35. In Schedule 15, paragraphs 1 to 95 and 97 to 99.

### PART 5

#### OFFSHORE FUNDS

<i>Reference</i>	<i>Extent of repeal</i>
Finance Act 2008 (c. 9)	Sections 40A to 42A.
Finance Act 2009	In section 44, the words from “Part 1” to “funds), and”. In Schedule 22, Part 1.



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## PART 6

### OIL ACTIVITIES

<i>Reference</i>	<i>Extent of repeal</i>
Finance Act 1982 (c. 39)	In Schedule 19, paragraph 10(7).
Income and Corporation Taxes Act 1988 (c. 1)	Section 493(1) to (6). Sections 495 and 496. Section 502(1) and (2).
Finance Act 1990 (c. 29)	Section 62(3).
Finance Act 1991 (c. 31)	Sections 62 to 65.
Finance (No. 2) Act 1992 (c. 48)	Section 55.
Petroleum Act 1998 (c. 17)	In Schedule 4, paragraph 25.
Finance Act 1998 (c. 36)	Section 152(3).
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 42 and 73.
Finance Act 2004 (c. 12)	Section 285(7). In Schedule 37, paragraphs 10 and 11.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 192 to 194.
Finance Act 2006 (c. 25)	Section 151. In Schedule 18, paragraph 12(3)(b) and (7).
Finance Act 2008 (c. 9)	Section 104. In Schedule 27, paragraph 21. In Schedule 39, paragraph 27.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 356.

## PART 7

### ALTERNATIVE FINANCE ARRANGEMENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 151F.
Finance Act 2005 (c. 7)	Sections 46 to 47A, 48(1), 48A, 48B(1) to (5) and (9) and 49 to 57. In Schedule 2, paragraphs 1, 8 and 10 to 13.
Finance Act 2006	Section 95(1) to (8) and (11). Sections 96 to 98.

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Income Tax Act 2007 (c. 3)	In Schedule 1, paragraphs 597 to 599.
Finance Act 2007 (c. 11)	Section 53(1) to (10), (13) and (14). Section 54.
Employment Income (Meaning of Securities) Order 2007 (S.I. 2007/2130)	The whole Order.
Finance Act 2008	Section 156.
Alternative Finance Arrangements (Community Investment Tax Relief) Order 2008 (S.I. 2008/1821)	The whole Order.
Corporation Tax Act 2009	Section 521. Section 1310(5). In Schedule 1, paragraphs 649 to 661 and 683.
Finance Act 2009 (c. 10)	In Schedule 61, paragraph 27.

## PART 8

### LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

<i>Reference</i>	<i>Extent of repeal</i>
Finance Act 1997 (c. 16)	Section 82. In Schedule 12, paragraphs 1 to 7, 9 to 17 and 20 to 30.
Finance Act 1998 (c. 36)	In Schedule 7, paragraph 12.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 98.
Finance Act 2002 (c. 23)	Section 103(4)(e).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 494.
Finance Act 2006 (c. 25)	In Schedule 9, paragraph 7.
Finance Act 2008 (c. 9)	In Schedule 2, paragraph 69(3).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 447 and 448.

## PART 9

### SALE AND LEASE-BACK ETC

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 24. Sections 779 to 785.
Finance Act 1996 (c. 8)	In Schedule 21, paragraph 21.

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Finance Act 1998	In Schedule 7, in paragraph 1, the entries for provisions of sections 779, 780, 781, 782 and 785 of ICTA.
Capital Allowances Act 2001	In Schedule 2, paragraph 57.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 101 and 102.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraphs 32 and 33.
Income Tax (Trading and Other Income) Act 2005	In section 49(2)(a), the words “(see subsection (3))”. In Schedule 1, paragraphs 314 to 319.
Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229)	Regulation 98.
Finance Act 2006	In Schedule 9, paragraph 3.
Income Tax Act 2007 (c. 3)	In section 1016(2), in Part 3 of the table, the entries for sections 780(3A)(a) and 781(1) of ICTA. In Schedule 1, paragraphs 187 to 190.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraph 156(2).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 13(2)(a), 232(2) and (3)(b) and (d), 233, 234(3) and (4)(a) and (c) and 236.

## PART 10

### FACTORING OF INCOME ETC

<i>Reference</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Sections 774A to 774G. Section 786.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 320.
Finance Act 2006 (c. 25)	In Schedule 6, paragraphs 6 and 8.
Income Tax Act 2007 (c. 3)	In section 2(13)(e), the word “or” at the end. In section 1016(2), in Part 3 of the table, the entry for section 786(5)(a) of ICTA.
Finance Act 2007 (c. 11)	In Schedule 5, paragraphs 3 to 7 and 17(4). In Schedule 14, paragraph 9.
Corporation Tax Act 2009	In Schedule 1, paragraphs 226 to 229 and 241.

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## PART 11

### UK REPRESENTATIVES OF NON-UK RESIDENTS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 1995 (c. 4)	Sections 126 and 127. Schedule 23.
Finance Act 1998 (c. 36)	In Schedule 7, paragraph 10.
Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)	Article 89.
Finance Act 2003 (c. 14)	In Schedule 27, paragraphs 4 and 5.
Income Tax (Trading and Other Income) Act 2005	In Schedule 1, paragraph 479.
Finance Act 2005 (c. 7)	Section 48(3).
Finance Act 2006	Section 95(10).
Income Tax Act 2007	In section 2(14), the word “and” immediately after paragraph (b). In section 817(3), the words “by the broker”. In section 1014(2), paragraph (ba) and, in paragraph (g), the word “and” at the end of subparagraph (iib).
Finance Act 2007	In Schedule 1, paragraph 367.
Finance Act 2007	Section 53(11).
Finance Act 2008 (c. 9)	In Schedule 16, paragraphs 1, 2 and 11(1).
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraph 401(a).

## PART 12

### MISCELLANEOUS RELOCATIONS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Taxes Management Act 1970 (c. 9)	In the first column of the Table in section 98— (a) the entry for paragraph 2 of Schedule 15 to FA 1973, (b) the entry for section 42 of ICTA, and (c) the entry for regulations under section 199 of FA 2003.
Finance Act 1973 (c. 51)	Section 38. Schedule 15.
Finance Act 1974 (c. 30)	Section 24.

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Finance Act 1976 (c. 40)	In Schedule 9, paragraph 5.
Finance Act 1978 (c. 42)	Section 29(3).
Finance Act 1984 (c. 43)	Section 124.
Finance (No. 2) Act 1987 (c. 51)	Section 86(3)(b).
Income and Corporation Taxes Act 1988 (c. 1)	Section 6(5). Section 42. Section 84A. Section 152. Section 337A(2). Section 475. Section 700. Section 787. In Schedule 29, in the Table in paragraph 32, the entries relating to Schedule 15 to FA 1973.
Finance Act 1988 (c. 39)	Sections 130 to 132.
Finance Act 1989 (c. 26)	Section 151. Section 164(5)(b).
Finance Act 1991 (c. 31)	Section 42.
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraphs 3 and 16(6).
Finance (No. 2) Act 1992 (c. 48)	Section 66. Schedule 12.
Finance Act 1995 (c. 4)	In Schedule 18, paragraph 6.
Jobseekers Act 1995 (c. 18)	In Schedule 2, paragraph 13.
Finance Act 1996 (c. 8)	In section 200(1)(a), the words “, income tax”. In Schedule 14, paragraph 27. In Schedule 28, in paragraph 3— (a) in sub-paragraph (1), the words from “for subsection (1)” to the end, and (b) sub-paragraph (2). In Schedule 38, paragraph 1.
Petroleum Act 1998 (c. 17)	In Schedule 4, paragraph 5.
Finance Act 1998 (c. 36)	Section 36. Section 118. In Schedule 7— (a) in paragraph 1, the word “84A(2)(a),” and (b) in paragraph 8 the words from “and Schedule 12” to the end.

*Status: Point in time view as at 31/12/2012.*

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	In Schedule 14, paragraphs 6 and 7(3) and, in paragraph 7(5), the words “Except as provided by the preceding provisions of this paragraph,”.
Finance Act 2000 (c. 17)	Section 144.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraph 101.
Finance Act 2002 (c. 23)	Section 107.
Secretaries of State for Education and Skills and for Work and Pensions Order 2002 (S.I. 2002/1397)	In the Schedule, paragraph 6.
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In Schedule 6, paragraphs 11, 23 and 144 to 147.
Finance Act 2003 (c. 14)	Section 199.
Communications Act 2003 (c. 21)	In Schedule 17, paragraph 152.
Finance Act 2004 (c. 12)	In Schedule 12, paragraph 12.
Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310)	In the Schedule, paragraph 4.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 24, 59, 291, 387 and 388. In Schedule 2, paragraph 91.
Finance (No. 2) Act 2005 (c. 22)	Section 61.
Finance Act 2006 (c. 25)	Section 71(2) and (3). In Schedule 13, paragraph 29.
Income Tax Act 2007 (c. 3)	In section 3(2), the word “and” immediately before paragraph (e). In Schedule 1, paragraph 275.
Finance Act 2007 (c. 11)	In Schedule 13, paragraph 13.
Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56)	In Schedule 1, paragraphs 133(3), 135(2) and 164.
Corporation Tax Act 2009 (c. 4)	In Schedule 1, paragraphs 104(3)(a), 160(a), 209(c) and (d), 242(2), 311, 312, 389 and 390.
Finance Act 2009 (c. 10)	Section 111.

### PART 13

#### REPEALS FOR PURPOSES CONNECTED WITH OTHER TAX LAW REWRITE ACTS

##### *Reference*

##### *Extent of repeal*

In relation to the repeal in F(No.2)A 1997, see paragraph 171 of Schedule 2 to ITA 2007.

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*Status: Point in time view as at 31/12/2012.*

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Income and Corporation Taxes Act 1988 (c. 1)	Section 59(3) and (4).
Finance Act 1988 (c. 39)	In Schedule 3, paragraph 21.
Finance Act 1991 (c. 31)	In Schedule 11, paragraph 2(1) and (3).
Finance Act 1993 (c. 34)	Section 72. Section 107(2)(a). In Schedule 6, paragraph 10.
Finance Act 1994 (c. 9)	In Schedule 19, paragraph 37.
Finance (No. 2) Act 1997 (c. 58)	In Schedule 4, paragraph 21.
Finance Act 1998 (c. 36)	Section 27(1)(b). Section 79(2). Section 119. In Schedule 7— (a) in paragraph 1, the words “109A(2)(d), (4) and (4A),”, the words “117(1), (3)(b) and (4),”, the word “160(1C)(b),”, the word “368(3),”, the word “526(1)(b),” and the words “830(4) in the second place,”, and (b) in paragraph 3, the words “and 112(1)”.
Finance Act 1999 (c. 16)	In Schedule 4, paragraphs 1(2) and 3(3).
Finance Act 2000 (c. 17)	Section 78.
Regulation of Care (Scotland) Act 2001 (asp 8)	In Schedule 3, paragraph 14(d) and (e).
Finance Act 2004 (c. 12)	Section 318(2).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 35(3)(a) and (4) and 401.
Finance Act 2005 (c. 7)	Section 48B(6) to (8). In Schedule 2, paragraph 9.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 8, paragraphs 2 and 3.

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In relation to the repeal in F(No.2)A 1997, see paragraph 171 of Schedule 2 to ITA 2007.

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## SCHEDULE 11

Section 379

### INDEX OF DEFINED EXPRESSIONS USED IN PARTS 2 TO 8

#### PART 1

##### DOUBLE TAXATION RELIEF: INDEX OF DEFINED EXPRESSIONS USED IN PARTS 2 AND 3

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chargeable gain (in Part 2 so far as relating to capital gains tax)	section 105
double taxation arrangements (in Part 2)	section 2(4)
double taxation arrangements (in Part 3)	section 136(2)
foreign tax (in Chapter 2 of Part 2)	section 21(1)
[ <sup>F159</sup> insurance company	section 65 of FA 2012 (as applied by section 141(2) of that Act)]
international arrangements (in Part 3)	section 136(3)
[ <sup>F159</sup> long-term business	section 63 of FA 2012 (as applied by section 141(2) of that Act)]
the non-UK territory (in Chapter 2 of Part 2)	section 21(1)
the Savings Directive (in Part 3)	section 136(4)
savings income (in Part 3)	section 136(5)
special withholding tax (in Part 3)	section 136(6)
tax not chargeable directly or by deduction (in Chapter 2 of Part 2)	sections 17(3) and 20(4)
tax payable or chargeable (in Chapter 2 of Part 2)	sections 17(3) and 20(4)
tax payable or paid under the law of a territory outside the United Kingdom (in Chapter 2 of Part 2, except section 29, in its application to relief under unilateral relief arrangements)	section 8(2)
underlying tax (in Chapter 2 of Part 2)	section 21(1)
unilateral relief arrangements (in Part 2)	section 8(1)

#### **Textual Amendments**

**F159** Words in Sch. 11 Pt. 1 inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 244](#)



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## PART 2

### TRANSFER PRICING: INDEX OF DEFINED EXPRESSIONS USED IN PART 4

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the arm's length provision (in Part 4)	section 151
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the disadvantaged person (in Chapter 4 of Part 4)	section 174(1)
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the guarantor company (in Chapter 5 of Part 4)	section 191(5)
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medium-sized enterprise (in Chapter 3 of Part 4)	section 172
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section 182 claim (in Part 4)	section 181(3)
the security (in Chapter 5 of Part 4)	section 191(5)
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transfer pricing notice (in Chapter 3 of Part 4)	section 168(2)

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## PART 3

### ADVANCE PRICING AGREEMENTS: INDEX OF DEFINED EXPRESSIONS USED IN PART 5

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advance pricing agreement (in Part 5)	section 218(1)
the Commissioners (in Part 5)	section 230
officer (in Part 5)	section 230

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*Status: Point in time view as at 31/12/2012.*

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## PART 4

### TAX ARBITRAGE: INDEX OF DEFINED EXPRESSIONS USED IN PART 6

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company tax return (in Part 6)	section 259(1)
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deduction notice (in Part 6)	section 232(2)
the deduction scheme conditions (in Part 6)	section 232(2)
discovery assessment (in Part 6)	section 259(1)
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receipt notice (in Part 6)	section 249(2)
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scheme (in Part 6)	section 258
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## PART 5

### TAX TREATMENT OF FINANCING COSTS AND INCOME: INDEX OF DEFINED EXPRESSIONS USED IN PART 7

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company to which Chapter 3 applies (in Chapter 3 of Part 7)	section 275
company to which Chapter 4 applies (in Chapter 4 of Part 7)	section 287
corporate entity (in Part 7)	section 340
[ <sup>F160</sup> dual resident investing company (in Chapter 3 of Part 7)	section 275A]
EEA territory (in Chapter 5 of Part 7)	section 301(2)
effective interest method (in Part 7)	section 351
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financial instrument (in Chapter 2 of Part 7)	section 270(1)
financial statements of the worldwide group (in Part 7)	section 346(2)

*Status:* Point in time view as at 31/12/2012.

*Changes to legislation:* Taxation (International and Other Provisions) Act 2010 is up to date with all changes known to be in force on or before 24 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)

financing expense amount (in Part 7)	section 313
financing income amount (in Chapter 5 of Part 7 and section 305 section 311)	section 305
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FISMA 2000 (in Part 7)	section 353
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[ <sup>F160</sup> group securitisation company (in Chapter 2 of Part 7)	section 273A]
HMRC (in Part 7)	section 353
insurance activities (in Chapter 2 of Part 7)	section 269
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relevant accounting period (in Part 7)	section 352
relevant associate (in Chapter 5 of Part 7)	section 300
relevant dealing (in Chapter 2 of Part 7)	section 270(2), (3)
relevant group company (in Part 7)	section 345
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the relevant period of account (in Chapter 3 of Part 7)	section 274(1)
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the reporting body (in Chapter 3 of Part 7)	section 277
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subsidiary (in Part 7)	section 351
tax of a territory outside the United Kingdom (in Chapter 5 of Part 7)	section 304(2), (3)
tax of the United Kingdom (in Chapter 5 of Part 7)	section 304(1)
tax-resident (in Chapter 5 of Part 7)	section 301(1)
tested expense amount (in Part 7)	section 329
tested income amount (in Part 7)	section 330
total disallowed amount (in Chapter 3 of Part 7)	section 274(2)

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total disallowed amount (in Chapter 4 of Part 7)	section 286(2)
UK group company (in Part 7)	section 345
[ <sup>F160</sup> UK net debt (in Chapter 2 of Part 7)	section 262]
UK trading income (in Chapter 2 of Part 7)	section 266(3)
ultimate parent (in Part 7)	section 339
[ <sup>F160</sup> worldwide gross debt (in Chapter 2 of Part 7)	section 264]
the worldwide group (in Part 7)	section 337
worldwide trading income (in Chapter 2 of Part 7)	section 266(3)

#### **Textual Amendments**

**F160** Words in Sch. 11 Pt. 5 inserted (retrospectively) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 5 paras. 35, 36\(1\)](#)

## **PART 6**

### OFFSHORE FUNDS: INDEX OF DEFINED EXPRESSIONS USED IN PART 8

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participation (in Part 8)	section 362(2)
part of umbrella arrangements (in Part 8)	section 363(2)
umbrella arrangements (in Part 8)	section 363(1)

**Status:**

Point in time view as at 31/12/2012.

**Changes to legislation:**

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