
*Changes to legislation: There are currently no known outstanding effects
for the Finance (No. 2) Act 2015, PART 2. (See end of Document for details)*

SCHEDULES

SCHEDULE 3

BANKING COMPANIES: SURCHARGE

PART 2

CONSEQUENTIAL AMENDMENTS

TMA 1970

- 2 In section 59E of TMA 1970 (further provision as to when corporation tax is due and payable), in subsection (11), after paragraph (b) insert—
- “(ba) to any sum chargeable on a company under section 269DA of CTA 2010 (surcharge on banking companies) as if it were an amount of corporation tax chargeable on the company;”.

FA 1998

- 3 (1) Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- (2) In paragraph 1 (meaning of “tax”)—
- (a) before the entry relating to section 455 of CTA 2010 insert— “section 269DA of the Corporation Tax Act 2010 (surcharge on banking companies), ”, and
- (b) in the entry relating to section 455 of CTA 2010, for “the Corporation Tax Act 2010” substitute “ that Act ”.
- (3) In paragraph 8(1) (calculation of tax payable), in the third step, after paragraph 1 insert—
- “(1ZA) Any sum chargeable under section 269DA of that Act (surcharge on banking companies).”

CTA 2010

- 4 CTA 2010 is amended as follows.
- 5 In section 269A (overview of Part 7A), at the end insert—
- “(4) Chapter 4 contains provision for a surcharge on banking companies.”
- 6 In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate places insert—

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“the appropriate person (in Chapter 4 of section 269DF(9))
Part 7A)

“chargeable accounting period (in section 269DA(1))
Chapter 4 of Part 7A)

“company tax return (in Chapter 4 of Part section 269DO”
7A)

“group allowance allocation statement section 269DO”
(in Chapter 4 of Part 7A)

“group allowance nomination (in section 269DF(1))”
Chapter 4 of Part 7A)

“group surcharge allowance (in Chapter section 269DF”
4 of Part 7A)

“HMRC (in Chapter 4 of Part 7A) section 269DO”

“nominated company (in Chapter 4 of section 269DF(1))”
Part 7A)

“surcharge allowance (in Chapter 4 of section 269DA(3) and (4))”
Part 7A)

“surcharge profits (in Chapter 4 of Part section 269DA(2))”
7A)

TIOPA 2010

- 7 Part 9A of TIOPA 2010 (controlled foreign companies) is amended as follows.
- 8 In section 371BC (charging the CFC charge), at step 5 in subsection (1), for “and
371BH” substitute “ to 371BI ”.
- 9 After section 371BH insert—

“371BI Banking companies

- (1) In relation to a chargeable company that is a banking company for the
relevant corporation tax accounting period, step 5 in section 371BC(1) is to
be taken in accordance with subsections (2) to (5).
- (2) The amount given by paragraph (a) at step 5 is to be increased by an amount
equal to—

$$(PCP - SASA) \times SP$$

where—

“PCP” is P% of the CFC's chargeable profits;

“SASA” is so much (if any) of the chargeable company's available surcharge
allowance as the company specifies for the purposes of this subsection in its
company tax return for the relevant corporation tax accounting period;

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“SP” is the percentage specified in section 269DA(1) of CTA 2010 (surcharge on banking companies).

- (3) Subsection (5) applies in relation to the chargeable company if—
 - (a) there are arrangements that result in a relevant transfer, and
 - (b) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on the chargeable company at step 5 in section 371BC(1) in consequence of subsection (2).
- (4) There is a “relevant transfer” if there is, in substance—
 - (a) a transfer (directly or indirectly) of all or a significant part of the chargeable profits of the CFC, for the CFC's accounting period, to a non-banking company, or
 - (b) a transfer (directly or indirectly) of a loss or deductible amount to the CFC, for the CFC's accounting period, from a non-banking company, resulting in the elimination or significant reduction of the CFC's chargeable profits for that period.
- (5) For the purposes of subsection (2), the CFC's chargeable profits are to be taken to be what they would have been had the relevant transfer not taken place.
- (6) Subsections (7) to (9) apply in relation to an accounting period of a CFC (“the relevant CFC accounting period”) where—
 - (a) a company (“C”)—
 - (i) has an accounting period for corporation tax purposes during which the relevant CFC accounting period ends, and
 - (ii) is a banking company for that accounting period,
 - (b) there are arrangements that—
 - (i) do not result in a relevant transfer, but
 - (ii) disregarding subsections (7) to (9), would result in some or all of the CFC's chargeable profits for the relevant CFC accounting period being apportioned to one or more non-banking companies at step 3 in section 371BC(1) instead of being apportioned to C, and
 - (c) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on C at step 5 in section 371BC(1) in consequence of subsection (2) (whether in relation to the relevant CFC accounting period or any other accounting period of the CFC).
- (7) If the arrangements would otherwise result in C not having a relevant interest in the CFC, C is to be treated as having the relevant interest in the CFC.
- (8) The CFC's chargeable profits and creditable tax for the relevant CFC accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (9) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the result of the arrangements mentioned in subsection (6)(b)(ii).

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(10) In this section—

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

“available surcharge allowance” means available surcharge allowance under section 269DE or (as the case may be) 269DJ of CTA 2010;

“banking company” has the same meaning as in Chapter 4 of Part 7A of CTA 2010 (see section 269DO of that Act);

“deductible amount” means—

- (a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),
- (b) an expense of a UK property business or overseas property business,
- (c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,
- (d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and relationships treated as such) (see section 301(2) of that Act), or
- (e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act);

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

“non-banking company” means a company that, at any time when the arrangements mentioned in subsection (3) or (as the case may be) (6) have effect, is neither—

- (a) a banking company, nor
- (b) a CFC in relation to which a banking company is a chargeable company.

(11) Sections 269DE(6) and 269DJ(5) of CTA 2010 contain restrictions on the amount of available surcharge allowance that can be specified and section 269DK of that Act makes provision about what happens if those restrictions are exceeded.”

10 After section 371UB insert—

“371UBA Payments in respect of a charge on a banking company: information to be provided

(1) This section applies if—

- (a) a sum is charged on a chargeable company at step 5 in section 371BC(1),
- (b) the chargeable company is a banking company (within the meaning of Chapter 4 of Part 7A of CTA 2010) for the relevant corporation tax accounting period, and

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- (c) a payment is made (whether or not by the chargeable company) that is wholly or partly in respect of the sum charged on the chargeable company as mentioned in paragraph (a).
- (2) The responsible company must notify an officer of Revenue and Customs in writing, on or before the date the payment is made, of the amount of the payment that is in respect of the sum charged on the chargeable company as mentioned in subsection (1)(a).
- (3) “The responsible company” is—
 - (a) if the chargeable company is party to relevant group payment arrangements, the company that is, under those arrangements, to discharge the liability of the chargeable company to pay corporation tax for the relevant corporation tax accounting period, and
 - (b) otherwise, the chargeable company.
- (4) “Relevant group payment arrangements” means arrangements under section 59F(1) of TMA 1970 (arrangements for paying of tax on behalf of group members) that relate to the relevant corporation tax accounting period.
- (5) The requirement in subsection (2) is to be treated, for the purposes of Part 7 of Schedule 36 to FA 2008 (information and inspection powers: penalties), as a requirement in an information notice.
- (6) This section is subject to any provision to the contrary in regulations under section 59E of TMA 1970 (further provision as to when corporation tax is due and payable).
- (7) In this section “relevant corporation tax accounting period” has the meaning given by section 371BC(3).”

FA 2015

11 Part 3 of FA 2015 (diverted profits tax) is amended as follows.

12 (1) Section 79 (charge to tax) is amended as follows.

(2) In subsection (2), for “The” substitute “ Subject to subsections (3) and (3A), the ”.

(3) In subsection (3), for “But if” substitute “ If ”.

(4) After subsection (3) insert—

“(3A) If, and to the extent that, the taxable diverted profits are banking surcharge profits or notional banking surcharge profits, subsection (2)(a) has effect in relation to those profits as if the rate specified were 33% rather than 25%.”

(5) In subsection (5)—

(a) after the definition of “adjusted ring fence profits” insert—

““banking surcharge profits” means surcharge profits within the meaning of Chapter 4 of Part 7A of that Act (see section 269DA(2) of that Act);”;

(b) after the definition of “notional adjusted ring fence profits” insert—

““notional banking surcharge profits”, in relation to the company, means the total of—

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- (a) profits within section 85(5)(a) or 91(5)(a), to the extent that (assuming they were profits of the company chargeable to corporation tax) they would have been banking surcharge profits, and
 - (b) any amounts of relevant taxable income of a company (“CC”) within section 85(4)(b) or (5)(b) or 91(4)(b) or (5)(b), to the extent that (assuming those amounts were profits of CC chargeable to corporation tax) they would have been banking surcharge profits of CC.”
- 13 In section 107 (meaning of “effective tax mismatch outcome”), in the definition of “relevant tax” in subsection (8), after paragraph (a) insert—
 - “(aa) a sum chargeable under section 269DA of CTA 2010 (surcharge on banking companies) as if it were an amount of corporation tax,”.

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