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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Paragraph 94. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 7

#### LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

#### PART 2

##### DERIVATIVE CONTRACTS: AMENDMENTS OF PART 7 OF CTA 2009

94 In Chapter 11 of Part 7 of CTA 2009, after section 698A insert—

*“Counteracting avoidance arrangements*

##### **698B Counteracting effect of avoidance arrangements**

- (1) Any derivative-related tax advantages that would (in the absence of this section) arise from relevant avoidance arrangements are to be counteracted by the making of such adjustments as are just and reasonable in relation to credits and debits to be brought into account for the purposes of this Part.
- (2) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (3) For the meaning of “relevant avoidance arrangements” and “derivative-related tax advantage”, see section 698C.

##### **698C Interpretation of section 698B**

- (1) This section applies for the interpretation of section 698B (and this section).
- (2) “Arrangements” include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3) Arrangements are “relevant avoidance arrangements” if their main purpose, or one of their main purposes, is to enable a company to obtain a derivative-related tax advantage.
- (4) But arrangements are not “relevant avoidance arrangements” if the obtaining of any derivative-related tax advantages that would (in the absence of section 698B) arise from them can reasonably be regarded as consistent with any principles on which the provisions of this Part that are relevant to the arrangements are based (whether expressed or implied) and the policy objectives of those provisions.
- (5) A company obtains a “derivative-related tax advantage” if—

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- (a) it brings into account a debit to which it would not otherwise be entitled,
  - (b) it brings into account a debit which exceeds that to which it would otherwise be entitled,
  - (c) it avoids having to bring a credit into account,
  - (d) the amount of any credit brought into account by the company is less than it would otherwise be, or
  - (e) it brings a debit or credit into account earlier or later than it otherwise would.
- (6) In subsection (5), references to bringing a debit or credit into account are references to bringing a debit or credit into account for the purposes of this Part.

#### **698D Examples of results that may indicate exclusion not applicable**

- (1) Each of the following is an example of something which might indicate that arrangements whose main purpose, or one of whose main purposes, is to enable a company to obtain a derivative-related tax advantage are not excluded by section 698C(4) from being “relevant avoidance arrangements” for the purposes of section 698B—
- (a) the elimination or reduction, for purposes of corporation tax, of profits of a company arising from any of its derivative contracts, where for economic purposes profits, or greater profits, arise to the company from that contract;
  - (b) the creation or increase, for purposes of corporation tax, of a loss or expense arising from a derivative contract, where for economic purposes no loss or expense, or a smaller loss or expense, arises from that contract;
  - (c) preventing or delaying the recognition as an item of profit or loss of an amount that would apart from the arrangements be recognised in the company's accounts as an item of profit or loss or be so recognised earlier;
  - (d) ensuring that a derivative contract is treated for accounting purposes in a way in which it would not have been treated in the absence of some other transaction forming part of the arrangements;
  - (e) enabling a company to bring into account a debit in respect of an exchange loss, in circumstances where a corresponding exchange gain would not give rise to a credit or would give rise to a credit of a smaller amount;
  - (f) enabling a company to bring into account a debit in respect of a fair value loss in circumstances where a corresponding fair value gain would not give rise to a credit or would give rise to a credit of a smaller amount.
- (2) But in each case the result concerned is only capable of indicating that section 698C(4) is not available if it is reasonable to assume that such a result was not the anticipated result when the provisions of this Part that are relevant to the arrangements were enacted
- (3) In subsection (1)(f) references to a fair value gain or a fair value loss are references respectively to—

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- (a) a profit to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question, or
  - (b) a loss to be brought into account in relation to a derivative contract where fair value accounting is used for the period in question.
- (4) “Arrangements” and “derivative-related tax advantage” have the same meaning as in section 698C.”

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