

SCHEDULES

SCHEDULE 4

AVOIDANCE INVOLVING PROFIT FRAGMENTATION ARRANGEMENTS

Tax mismatch: resulting reduction and resulting increase

- 6 (1) For the purposes of paragraph 5, the resulting reduction in the resident party's liability to a relevant tax for a tax period is—

$A \times TR$

where—

A is the sum of—

- (a) if there are expenses within paragraph 5(1)(a)(i), the lower of the amount of expenses and the amount of the deduction mentioned in that provision, and
- (b) any reduction in income mentioned in paragraph 5(1)(a)(ii), and

TR is the rate at which, assuming the resident party has profits equal to A chargeable to the relevant tax for the tax period, those profits would be chargeable to that tax.

For this purpose, the rate at which those profits would be chargeable to that tax for that period is the highest rate at which that tax would be chargeable for that period if those profits were added to the resident party's total income.

- (2) For the purposes of paragraph 5(1)(b) and (4), the resulting increase in relevant taxes payable by the overseas party for the period corresponding to the tax period is any increase in the total amount of relevant taxes that would fall to be paid by that party (and not refunded) assuming that—
- (a) the overseas party's income for that period, in consequence of the material provision were an amount equal to A,
 - (b) account were taken of any deduction or relief (other than any qualifying deduction or qualifying loss relief) taken into account by the overseas party in determining that party's actual liability to any relevant taxes in consequence of the material provision, and
 - (c) all further reasonable steps were taken—
 - (i) under the law of any part of the United Kingdom or any country or territory outside the United Kingdom, and
 - (ii) under double taxation arrangements made in relation to any country or territory,to minimise the amount of tax which would fall to be paid by the overseas party in the country or territory in question (other than steps to secure the benefit of any qualifying deduction or qualifying loss relief).

- (3) The steps mentioned in sub-paragraph (2)(c) include—

Status: This is the original version (as it was originally enacted).

- (a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and
 - (b) making elections for tax purposes.
- (4) For the purposes of this paragraph, any withholding tax which falls to be paid on payments made to the overseas party is (unless it is refunded) to be treated as tax which falls to be paid by that party (and not the person making the payment).
- (5) For the purposes of this paragraph, an amount of tax payable by the overseas party is refunded if and to the extent that—
- (a) any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
 - (b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of tax payable by the overseas party,
- but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief obtained by that party.
- (6) Where some or all of the overseas party’s income is treated for the purposes of a relevant tax charged under the law of a country or territory outside the United Kingdom as the income of a person or persons other than the overseas party, in paragraph 5 and this paragraph—
- (a) references to that party’s liability to any tax (however expressed) include a reference to the liabilities of that person or those persons to the relevant tax,
 - (b) references to any tax being payable by that party (however expressed) include a reference to the relevant tax being payable by that person or those persons, and
 - (c) references to loss relief obtained by that party include a reference to loss relief obtained by that person or those persons,
- and sub-paragraph (4) applies to that person or any of those persons as it applies to that party.
- (7) In this paragraph—
- “qualifying deduction” means a deduction which—
 - (a) is made in respect of actual expenditure of the overseas party,
 - (b) does not arise directly from the arrangements,
 - (c) is of a kind for which the resident party would have obtained a deduction in calculating that party’s liability to any income tax or corporation tax had that party incurred the expenditure in respect of which the deduction is given, and
 - (d) does not exceed the amount of the deduction that the resident party would have so obtained,
 - “qualifying loss relief” means any means by which a loss might be used for tax purposes to reduce the amount in respect of which the overseas party is liable to tax on the profits of a business, and
 - “relevant tax” has the same meaning as in paragraph 5.