

Status: Point in time view as at 22/07/2004.

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SCHEDULES

SCHEDULE 28AA **U.K.**

PROVISION NOT AT ARM'S LENGTH

Modifications etc. (not altering text)

- C1 Sch. 28AA modified (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 58(1)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 12**) (with Sch. 22 para. 58(3))
- C1 Sch. 28AA applied (with modifications) (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 59(1)(2)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 13**) (with Sch. 22 para. 59(4))
- C1 Sch. 28AA applied by Finance Act 1996 (c. 8), **s. 100** (as substituted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 6** (with s. 81(4)(5), **Sch. 23 para. 25**))
- C1 Sch. 28AA modified by Finance Act 1996 (c. 8), **Sch. 9 para. 11A(1)** (as inserted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 11** (with s. 81(4)(5), **Sch. 23 para. 25**))
- C1 Sch. 28AA excluded by Finance Act 1996 (c. 8), **Sch. 9 para. 12(2ZA)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 7(2)**)
- C1 Sch. 28AA modified by Finance Act 1996 (c. 8), **Sch. 9 para. 16** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 8**)
- C1 Sch. 28AA excluded by Finance Act 2002 (c. 23), **Sch. 26 para. 28(3A)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 15(2)**)
- C1 Sch. 28AA modified by Finance Act 2002 (c. 23), **Sch. 26 para. 31A** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 15(3)**)
- C1 Sch. 28AA excluded by Finance Act 2002 (c. 23), **Sch. 29 para. 55(1A)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 16(2)**)

General interpretation etc.

14 (1) In this Schedule—

“the actual provision” and “the affected persons” shall be construed in accordance with paragraph 1(1) above;

“the arm’s length provision” shall be construed in accordance with paragraph 1(2) and (3) above;

“double taxation arrangements” means arrangements having effect by virtue of section 788;

“foreign tax” means any tax under the law of a territory outside the United Kingdom or any amount which falls for the purposes of any double taxation arrangements to be treated as if it were such tax;

“insurance company” has the same meaning as in Chapter I of Part XII;

“losses” includes amounts which are not losses but in respect of which relief may be given in accordance with any of the following enactments—

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- (a) section 75(3) (excess of management expenses);
 - (b) section 468L(5) (allowance for interest distributions of a unit trust);
 - (c) Part X (loss relief and group relief);
 - (d) section 83 of and Schedule 8 to the ^{M1}Finance Act 1996 or paragraph 4 of Schedule 11 to that Act (deficits on loan relationships);
- [^{F1}“medium-sized enterprise” shall be construed in accordance with paragraph 5D above;]
- [^{F2}“non-qualifying territory” has the meaning given by paragraph 5E above;]
- [^{F3}“paragraph 6C claim” has the meaning given by paragraph 6C(2) above;]
- “profits” includes income;
- [^{F4}“qualifying territory” has the meaning given by paragraph 5E above;]
- “the relevant activities”, in relation to a person who is one of the persons as between whom any provision is made or imposed, means such of his activities as—
- (i) comprise the activities in the course of which, or with respect to which, that provision is made or imposed; and
 - (ii) are not activities carried on either separately from those activities or for the purposes of a different part of that person’s business;
- [^{F5}“small enterprise” shall be construed in accordance with paragraph 5D above;]
- “transaction” and “series of transactions” shall be construed in accordance with paragraph 3 above.
- (2) Without prejudice to paragraphs 9(2) and 11(3) above, references in this Schedule to a person controlling a body corporate or a partnership shall be construed in accordance with section 840.
- (3) In determining for the purposes of this Schedule whether a person has an entitlement, in pursuance of any double taxation arrangements or under section 790(1), to be given credit for foreign tax, any requirement that a claim is made before such a credit is given shall be disregarded.
- (4) Any adjustments required to be made by virtue of this Schedule may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.
- (5) This Schedule shall have effect as if—
- (a) a unit trust scheme were a company that is a body corporate;
 - (b) the rights of the unit holders under such a scheme were shares in the company that the scheme is deemed to be;
 - (c) rights and powers of a person in the capacity of a person entitled to act for the purposes of the scheme were rights and powers of the scheme; and
 - (d) provision made or imposed as between any person in such a capacity and another person were made or imposed as between the scheme and that other person.

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Textual Amendments

- F1** Sch. 28AA para. 14(1): definition of "medium-sized enterprise" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), s. 31(5)
- F2** Sch. 28AA para. 14(1): definition of "non-qualifying territory" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), s. 31(5)
- F3** Sch. 28AA para. 14(1): definition of "paragraph 6C claim" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), s. 35(5)
- F4** Sch. 28AA para. 14(1): definition of "qualifying territory" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), s. 31(5)
- F5** Sch. 28AA para. 14(1): definition of "small enterprise" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), s. 31(5)

Marginal Citations

- M1** 1996 c. 8.

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