

SCHEDULES

SCHEDULE 8

Section 48

LOAN RELATIONSHIPS: MISCELLANEOUS AMENDMENTS

Introductory

- 1 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

Late interest: close companies where limited partnership is collective investment scheme etc

- 2 (1) Paragraph 2 (late interest) is amended as follows.
- (2) In sub-paragraph (1B) (case where debtor is close company and creditor is participator etc)—
- (a) in the opening words, after “close company” insert “, but not a CIS-based close company,”; and
 - (b) in the closing words, for the words from “a limited partnership” to the end of the sub-paragraph substitute “a CIS limited partnership”.
- (3) In sub-paragraph (6) (definitions) insert the following definitions at the appropriate place—

““CIS-based close company” means a company that would not be a close company apart from the attribution, under section 416(6) of the Taxes Act 1988 by virtue of section 417(3)(a) of that Act, of the rights and powers of one or more partners in a CIS limited partnership to another of the partners;”;

““CIS limited partnership” means a limited partnership—

- (a) which is a collective investment scheme, or
- (b) which would be a collective investment scheme if it were not a body corporate;”;

““collective investment scheme” means a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000;”.

- (4) The amendments made by this paragraph have effect for accounting periods ending on or after 10th December 2003.

Bad debts etc: release of amount where creditor is subject to insolvency proceedings

- 3 (1) Paragraph 5 (bad debts etc) is amended as follows.
- (2) In sub-paragraph (3) (cases where no credit is required to be brought into account by the debtor on the release of a debt) for the words following paragraph (b) substitute—

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“no credit in respect of the release shall be required to be brought into account in the case of that company if any of the four conditions set out below is satisfied.”.

(3) After sub-paragraph (3) insert—

“(4) Condition 1 is that the release is part of a relevant arrangement or compromise, within the meaning given by section 74(2) of the Taxes Act 1988.

(5) Condition 2 is that the debtor relationship is one as respects which section 87 of this Act (accounting method where parties have a connection) requires the use of an authorised accruals basis of accounting.

(6) Condition 3 is that—

- (a) in the case of the company releasing the amount, the circumstances are as described in any of paragraphs (a) to (d) of paragraph 6A(1) below (insolvent liquidation etc),
- (b) immediately before the time at which those circumstances arose in the case of that company, the relationship was one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting, and
- (c) immediately after that time, the relationship was not one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting.

In the application of paragraphs (a) to (d) of paragraph 6A(1) below for the purposes of paragraph (a) above, references in those paragraphs to the company which has the creditor relationship are to be taken as references to the company releasing the amount.

(7) Condition 4 is that—

- (a) the relationship is not one as respects which section 87 of this Act requires the use of an authorised accruals basis of accounting, and
- (b) in the case of the company which has the debtor relationship, the circumstances are as described in any of paragraphs (a) to (d) of paragraph 6A(1) below.

In the application of paragraphs (a) to (d) of paragraph 6A(1) below for the purposes of paragraph (b) above, references in those paragraphs to the company which has the creditor relationship are to be taken as references to the company which has the debtor relationship.”.

(4) The amendments made by this paragraph have effect in relation to any release made on or after 10th December 2003.

Bad debt etc: parties having connection and creditor in insolvent administrative receivership

4 (1) Paragraph 6A (bad debt etc: parties having connection and creditor in insolvent liquidation etc) is amended as follows.

(2) The amendments made to the paragraph by paragraph 29 of the Schedule to the Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096) shall be deemed never to have been made.

(3) In sub-paragraph (1) (cases where paragraph 6A applies) after paragraph (b) insert—

“(bb) the company is in insolvent administrative receivership;”.

(4) In sub-paragraph (2) (cases where departure from assumption of full payment allowed) after paragraph (b) insert—

“(bb) in a case falling within paragraph (bb) of that sub-paragraph, at a time when the appointment of the administrative receiver is in force;”.

(5) In sub-paragraph (2)(d) (which refers to a time corresponding to that described in paragraph (a), (b) or (c)) after “(b)” insert “, (bb)”.

(6) After sub-paragraph (4) (company in insolvent administration) insert—

“(5) For the purposes of this paragraph a company is in insolvent administrative receivership if—

- (a) there is in force in relation to that company an appointment of an administrative receiver, within the meaning of Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, and
- (b) the company was put into administrative receivership at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of administrative receivership.”.

(7) The amendments made by sub-paragraphs (3) to (6) have effect in relation to accounting periods ending on or after 10th December 2003.

Deemed assignment of assets and liabilities on company ceasing to be resident in UK etc

5 (1) After paragraph 10 (imported losses etc) insert—

“Deemed assignment of assets and liabilities on company ceasing to be resident in UK etc

10A (1) This paragraph applies if at any time (“the relevant time”)—

- (a) a company ceases to be resident in the United Kingdom, or
- (b) in the case of a company that is not resident in the United Kingdom, an asset or liability representing a loan relationship of the company ceases to be held for the purposes of a permanent establishment of the company in the United Kingdom in any circumstances not involving a related transaction.

(2) In a case falling within sub-paragraph (1)(a) above, this Chapter shall have effect as if the company had—

- (a) immediately before the relevant time, assigned the assets and liabilities that represent its loan relationships for a consideration of an amount equal to their fair value at that time, and
- (b) immediately reacquired them for a consideration of the same amount.

(3) Sub-paragraph (2) above does not apply in relation to an asset or a liability to the extent that, immediately after the relevant time, it is held or owed for the purposes of a permanent establishment of the company in the United Kingdom.

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(4) In a case falling within sub-paragraph (1)(b) above, this Chapter shall have effect as if the company had—

- (a) immediately before the relevant time, assigned the asset or liability, so far as ceasing to be held or owed for the purposes of the permanent establishment, for a consideration of an amount equal to its fair value at that time, and
- (b) immediately reacquired it for a consideration of the same amount.

(5) In this paragraph “fair value” shall be construed in accordance with section 85 of this Act.”.

(2) The amendment made by this paragraph has effect where the cessation in question occurs on or after 17th March 2004.

Discounted securities of close companies: limited partnership collective investment scheme etc

- 6 (1) Paragraph 18 (discounted securities of close companies) is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) after paragraph (a) insert—
 “(aa) the issuing company is not a CIS-based close company, as defined in paragraph 2(6) above;”.
- (3) In paragraph (c) of that sub-paragraph (debt not owed to limited partnership which is a collective investment scheme) for the words from “a limited partnership” to the end of the sub-paragraph substitute “a CIS limited partnership, as defined in paragraph 2(6) above”.
- (4) Omit sub-paragraph (3A) (meaning of connection between companies, an expression no longer used in the paragraph).
- (5) The amendments made by this paragraph have effect for accounting periods ending on or after 10th December 2003.

Interpretation of references to major interest

- 7 (1) Paragraph 20 (major interest) is amended as follows.
- (2) In sub-paragraph (1) (cases where one company has a major interest in another) omit paragraph (c) (both controllers etc to satisfy the same condition in sub-paragraph (2)).
- (3) Omit sub-paragraph (2) (both controllers etc are creditors, or both are debtors, of the controlled company).
- (4) The amendments made by this paragraph have effect for accounting periods beginning on or after 17th March 2004.