SCHEDULES

SCHEDULE 3

Section 24

QUALIFYING SCHEME

PART 1

INTRODUCTORY

1 For the purposes of section 24 a scheme is a qualifying scheme if it falls within any of the following Parts of this Schedule.

PART 2

SCHEMES INVOLVING HYBRID ENTITIES

2 A scheme falls within this Part if a party to a transaction forming part of the scheme is a hybrid entity.

3 (1) An entity is a hybrid entity if—

(a) under the tax law of any territory, the entity is regarded as being a person, and

(b) the entity's profits or gains are, for the purposes of a relevant tax imposed under the law of any territory, treated as the profits or gains of a person or persons other than that person.

(2) The requirement in sub-paragraph (1)(b) is not to be regarded as satisfied in relation to an entity by reason only of its profits or gains being subject to a rule similar to that in section 747(3) of ICTA (imputation of chargeable profits of controlled foreign company) and having effect under the tax law of any territory outside the United Kingdom.

(3) For the purposes of this paragraph, the following are relevant taxes—

(a) income tax;

(b) corporation tax;

(c) any tax of a similar character to income tax or corporation tax that is imposed by the law of a territory other than the United Kingdom.

PART 3

SCHEMES INVOLVING HYBRID EFFECT

Schemes involving hybrid effect

4 A scheme falls within this Part if it satisfies the requirements of paragraph 5, 6, 7 or 8.

Instruments of alterable character

5 (1) A scheme satisfies the requirements of this paragraph if one of the parties to the scheme is party to an instrument falling within sub-paragraph (2).

(2) An instrument falls within this sub-paragraph if, under the law of a particular territory, a relevant characteristic of the instrument may be altered on the election of any party to the instrument.

(3) For the purposes of this paragraph a characteristic of an instrument is a relevant characteristic if, under the law of a particular territory, altering it has the effect of determining whether, for the tax purposes of that territory—

(a) the instrument is taken into account as giving rise to income,

(b) the instrument is taken into account as giving rise to capital, or

(c) the instrument does not fall to be taken into account as giving rise either to income or to capital.

(4) An instrument is taken into account as giving rise to capital if any gain on the disposal of the instrument would, or would if the person making the disposal were resident in the United Kingdom, be a chargeable gain.

Shares subject to conversion

6 (1) A scheme satisfies the requirements of this paragraph if it includes—

(a) the issuing by a company of shares subject to conversion, or

(b) the amendment of rights attaching to shares issued by a company such that the shares become shares subject to conversion.

(2) For the purposes of sub-paragraph (1) a company's shares are shares subject to conversion if—

(a) the rights attached to the shares include provision by virtue of which a holder of such shares is entitled, on the occurrence of an event, to acquire by conversion or exchange securities in the company or another company, and

(b) the occurrence of the event is within the reasonable expectation of the company at the relevant time.

(3) For the purposes of sub-paragraph (2) the relevant time is—

(a) the time when the shares are issued, or

(b) if at the time when the shares are issued the occurrence of the event is not within the company's reasonable expectation and the rights attaching to the shares are later amended as described in sub-paragraph (1)(b), the time when the rights attaching to the shares are so amended.

(4) In this paragraph "security" has the same meaning as in Part 6 of ICTA.

Securities subject to conversion

7 (1) A scheme satisfies the requirements of this paragraph if it includes—

(a) the issuing by a company of securities subject to conversion, or

(b) the amendment of rights attaching to securities issued by a company such that the securities become securities subject to conversion.

(2) For the purposes of sub-paragraph (1) a company's securities are securities subject to conversion if—

(a) the rights attached to the securities include provision by virtue of which a holder of such securities is entitled, on the occurrence of an event, to acquire by conversion or exchange shares in the company or another company, and

(b) the occurrence of the event is within the reasonable expectation of the company at the relevant time.

(3) For the purposes of sub-paragraph (2) the relevant time is—

(a) the time when the securities are issued, or

(b) if at the time when the securities are issued the occurrence of the event is not within the company's reasonable expectation and the rights attaching to the securities are later amended as described in sub-paragraph (1)(b), the time when the rights attaching to the securities are so amended.

(4) In this paragraph "security" has the same meaning as in Part 6 of ICTA.

Debt instruments treated as equity

8 (1) A scheme satisfies the requirements of this paragraph if it includes a debt instrument issued by a company that is treated as equity in the company under generally accepted accounting practice.

(2) For the purposes of this paragraph, a debt instrument is an instrument issued by a company that represents a loan relationship of the company or, if the company were a company resident in the United Kingdom, would represent a loan relationship of the company.

PART 4

SCHEMES INVOLVING HYBRID EFFECT AND CONNECTED PERSONS

Schemes involving hybrid effect and connected persons

9 A scheme falls within this Part if it satisfies the requirements of paragraph 10 or 11.

Scheme including issue of shares not conferring a qualifying beneficial entitlement

10 (1) A scheme satisfies the requirements of this paragraph if it includes the issue by a company to a person connected with the company of shares other than shares falling within sub-paragraph (2).

(2) Shares issued by a company fall within this sub-paragraph if—

(a) on their issue, they are ordinary shares that are fully paid-up,

(b) at all times in the accounting period of the company in which the issue takes place, the shares confer a qualifying beneficial entitlement, and

(c) when the issue takes place, there is no arrangement or understanding under which the rights attaching to the shares may be amended.

(3) A share in a company confers a qualifying beneficial entitlement if it confers a beneficial entitlement to the relevant proportion of—

(a) any profits available for distribution to equity holders of the company, and

(b) any assets of the company available for distribution to its equity holders on a winding-up.

(4) For the purposes of sub-paragraph (3) the relevant proportion, in relation to a share, is the same as the proportion of the issued share capital represented by that share.

(5) Schedule 18 to ICTA (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) as it applies for the purposes of section 403C of ICTA.

Scheme including transfer of rights under a security

11 (1) A scheme satisfies the requirements of this paragraph if it includes a transaction or a series of transactions under which a person ("the transferor")—

(a) transfers rights to receive a payment under a relevant security to one or more other persons, or

(b) otherwise secures that one or more other persons are similarly benefited,

and sub-paragraphs (3) and (4) are satisfied.

(2) A person is similarly benefited for these purposes if he receives a payment which would, but for the transaction or series of transactions, have arisen to the transferor.

(3) This sub-paragraph is satisfied if—

(a) the transferor, and

(b) at least one of the persons to whom a transfer of rights is made or a similar benefit is secured,

are connected with each other.

(4) This sub-paragraph is satisfied if following the transfer of rights or the securing of the similar benefit—

(a) two or more persons either hold rights to receive a payment under the security or enjoy a similar benefit, and

(b) the rights held and benefits enjoyed by such of those persons as are connected have, taken together, a value equal to or greater than the value of any other rights to receive a payment under the security and of any other similar benefits, taken together.

(5) In sub-paragraph (4)(b) references to the value of rights to receive a payment under a relevant security are references to the market value of those rights; and references to the value of similar benefits are to be construed accordingly.

(6) In this paragraph a relevant security is—

(a) a security (within the meaning of Part 6 of ICTA), or

(b) any agreement under which a person receives an annuity or other annual payment (whether it is payable annually or at shorter or longer intervals) for a term which is not contingent on the duration of a human life or lives.

Interpretation

12 Section 839 of ICTA has effect for the purposes of this Part.

Status:
Point in time view as at 01/12/2009.

Changes to legislation:
There are currently no known outstanding effects for the Finance (No. 2) Act 2005, SCHEDULE 3.