

## SCHEDULES

### SCHEDULE 5

Section 30

#### AVOIDANCE INVOLVING FINANCIAL ARRANGEMENTS

##### *Amounts not forming part of a company's income*

- 1 (1) ICTA is amended as follows.
  - (2) In section 347A(1) (annual payments: general rule), as it had effect before ITA 2007, omit paragraph (b) together with the “and” before it (payment to which section applies not income of any company for corporation tax purposes).
  - (3) The amendment made by sub-paragraph (2) has effect in relation to payments made on or after 6th December 2006 but before 6th April 2007.
  - (4) Omit section 347A (as amended by ITA 2007).
  - (5) The amendment made by sub-paragraph (4) has effect in relation to payments made on or after 6th April 2007.
- 2 (1) In section 660C of ICTA, omit subsection (4) (income which is income of settlor alone for income tax purposes by virtue of section 624 or 629 of ITTOIA 2005 not income of any company for corporation tax purposes).
  - (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 6th March 2007.
  - (3) But income which arises in an accounting period beginning before that date is to be chargeable to corporation tax as a result of that amendment only if it arises on or after that date.

##### *Structured finance arrangements*

- 3 (1) Section 774B of ICTA (disregard of intended effects of arrangement involving disposals of assets) is amended as follows.
  - (2) For subsection (1) substitute—
    - “(1) This section applies if an arrangement is a structured finance arrangement in relation to a person (“the borrower”).
    - (1A) If the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)), the arrangement is not to have that effect.
    - (1B) If the arrangement would (disregarding this section) not have had that effect, the payments mentioned in section 774A(2)(d) are to be treated for tax purposes as income of the borrower payable in respect of the security (whether or not those payments are also the income of anyone else for tax purposes).”

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- (3) In subsection (4)(a) (income tax relief for finance charge in respect of advance), for the words from the beginning to “is a person” substitute “a person in relation to whom this section applies is”.
- (4) In subsection (5) (corporation tax relief for finance charge in respect of advance), for the words from the beginning to “is a company” substitute “If a person in relation to whom this section applies is”.
- 4 In section 774D of ICTA (disregard of intended effects of arrangement involving change in relation to a partnership), after subsection (2) insert—
- “(2A) In determining whether the condition in subsection (1)(b) is met it is to be assumed that amounts of income equal to the payments mentioned in section 774C(2)(f) or (4)(e) were payable to the borrower partnership before the time at which the relevant change in relation to its membership involving the lender or a person connected with the lender occurs.”
- 5 In section 774E of ICTA (exceptions), in subsection (7)(a) (meaning of “relevant person” where section 774B applies), for the words from “a person” to “of that section)” substitute “the borrower under the structured finance arrangement, a person connected with that borrower or (if that borrower is a partnership) a member of the partnership”.
- 6 (1) Section 774G of ICTA (minor definitions etc for purposes of sections 774A to 774D) is amended as follows.
- (2) In paragraph (a) of subsection (3) (meaning of receiving asset)—
- (a) for “include the person's” substitute “include—
- (i) the person's”, and
- (b) after “it” insert “, and
- (ii) the discharge (in whole or in part) of any liability of the person,”.
- (3) In paragraph (c) of that subsection (meaning of payments in respect of asset), for “include obtaining” substitute “include—
- (i) payments in respect of any other asset substituted for it under the arrangement, and
- (ii) obtaining”.
- (4) After subsection (5) insert—
- “(5A) In determining for the purposes of sections 774A to 774D whether an amount is recorded as a financial liability in respect of the advance it is to be assumed that the period of account in which the advance is received ended immediately after the receipt of the advance.”
- 7 (1) The amendments made by paragraphs 3 to 5 and 6(2) and (3) have effect in relation to any arrangements whenever made.
- (2) But, in relation to arrangements made before 6th March 2007, amounts are as a result of any of those amendments—
- (a) to be charged to tax, or
- (b) to be brought into account in calculating any income for tax purposes or deducted from any income for tax purposes,
- only if the amounts arise on or after that date.

- (3) In any case where, in relation to arrangements made before that date, a person is treated as a result of any of those amendments as being a party to any loan relationship—
- (a) a period of account is to be treated for the purposes of Chapter 2 of Part 4 of FA 1996 as beginning on that date, and
  - (b) the loan relationship is to be treated for those purposes as being entered into by the person for a consideration equal to the notional carrying value of the liability representing the relationship.
- (4) For this purpose the notional carrying value is the amount that would have been the carrying value of the liability in the accounts of the person if a period of account had ended immediately before that date.
- (5) “Carrying value” has the same meaning here as it has for the purposes of paragraph 19A of Schedule 19 to FA 1996.
- (6) The amendment made by paragraph 6(4) comes into force on the day on which this Act is passed.
- 8 (1) Section 263E of TCGA 1992 (structured finance arrangements) is amended as follows.
- (2) In subsection (2) (condition A: person making disposal of asset subsequently acquires it), for the words from “subsequently” to the end substitute “(and no-one else) has the right or obligation under the arrangement to acquire the asset disposed of by that disposal at any subsequent time (whether or not the right or obligation is subject to any conditions).”
- (3) In subsection (3) (condition B: asset ceases to exist)—
- (a) in paragraph (a), for “subsequently ceases” substitute “will subsequently cease”, and
  - (b) in paragraph (b), for “that asset was held” substitute “it is intended that that asset will be held”.
- (4) After subsection (4) insert—
- “(4A) If, at any time after that disposal, it becomes apparent that—
- (a) the person making the disposal will not subsequently acquire under the arrangement the asset disposed of by that disposal, or
  - (b) that asset will not be held as mentioned in subsection (3)(b),
- that person is to be treated for the purposes of this Act as disposing of that asset at that time for a consideration equal to its market value at that time.”
- (5) In subsection (5) (disregard of subsequent acquisitions), for “Any” substitute “Except in a case falling within subsection (4A), any”.
- (6) The amendments made by this paragraph have effect in relation to disposals made on or after 6th March 2007.
- (7) The amendments made by this paragraph also have effect in relation to any disposal made by a person before that date if the person makes a claim to that effect under this sub-paragraph.

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*Manufactured payments under arrangements having an unallowable purpose*

- 9 (1) In paragraph 7A(10) of Schedule 23A to ICTA (manufactured payments under arrangements having an unallowable purpose), in the definition of “manufactured payment”, after paragraph (c) insert—
- “(d) any payment which by virtue of paragraph 7(1) constitutes a fee;”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to payments made (or treated as made) on or after 6th December 2006.
- (3) But, in the case of any payment made (or treated as made) by a company in pursuance of old arrangements, that amendment has no effect in relation to so much of the payment as (on such just and reasonable apportionments as may be necessary) represents any old taxable income or gains arising or accruing to the company as a result of those arrangements.
- (4) For this purpose—
- “old arrangements” means arrangements in pursuance of which (or of any part of which) a transaction has taken place before 6th December 2006, and
- “old taxable income or gains arising or accruing” means income or gains within the charge to corporation tax arising or accruing (or treated as arising or accruing) before that date.

*Options and groups of companies*

- 10 (1) In section 171(2) of TCGA 1992 (exceptions to rule that disposals within the same group of companies produce neither a gain nor a loss), after paragraph (da) insert “or
- (db) a disposal by company A in fulfilment of its obligations under an option granted to company B at a time when those companies were not members of the same group;”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to cases where the option is exercised on or after 6th March 2007 (whenever the option was granted).

*Loan relationships: amounts not fully recognised for accounting purposes*

- 11 (1) Section 85C of FA 1996 (amounts not fully recognised for accounting purposes) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (c), for the words from “has at any time” to “liability”)” substitute “an amount (a “relevant capital contribution”) has at any time been contributed to the company which forms part of its capital (whether share or other capital)”, and
- (b) in paragraphs (d) and (e), for “relevant accounting liability” substitute “relevant capital contribution”.
- (3) In subsection (2)—
- (a) for “or relevant accounting liability of the company” substitute “of the company or any relevant capital contribution made to the company”, and
- (b) for “or liability” (in both places) substitute “or contribution”.
- (4) The amendments made by this paragraph have effect in relation to periods of account ending on or after 9th May 2007.

- (5) But, in relation to periods of account beginning before that date, amounts are to be brought into account for the purposes of Chapter 2 of Part 4 of FA 1996 as a result of those amendments only if the amounts relate to any time on or after that date.

*Shares treated as loan relationships*

- 12 (1) Section 91A of FA 1996 (shares subject to outstanding third party obligations) is amended as follows.
- (2) In subsection (4) (debits in respect of certain transactions to be ignored), for “No debits are to be brought into account” substitute “In determining those debits and credits there are to be left out of account amounts”.
- (3) Insert at the end—
- “(11) In this section “share” does not include a share in a building society.”
- (4) The amendment made by sub-paragraph (2) has effect in relation to accounting periods ending on or after 6th March 2007.
- (5) But, in relation to accounting periods beginning before that date, amounts are to be left out of account as a result of that amendment only if they relate to any time on or after that date.
- (6) The amendment made by sub-paragraph (3) has effect in relation to shares held on or after 6th March 2007.
- 13 (1) Section 91B of FA 1996 (non-qualifying shares) is amended as follows.
- (2) In subsection (4) (debits in respect of certain transactions to be ignored), for “no debits are to be brought into account” substitute “in determining those debits and credits there are to be left out of account amounts”.
- (3) Insert at the end—
- “(8) In this section “share” does not include a share in a building society.”
- (4) The amendment made by sub-paragraph (2) has effect in relation to accounting periods ending on or after 6th March 2007.
- (5) But, in relation to accounting periods beginning before that date, amounts are to be left out of account as a result of that amendment only if they relate to any time on or after that date.
- (6) The amendment made by sub-paragraph (3) has effect in relation to shares held on or after 6th March 2007.
- 14 (1) In section 103(1) of FA 1996 (interpretation of Chapter 2 of Part 4), in the definition of “share”, before “, in relation to a company,” insert “(except in sections 91A to 91G)”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to shares held on or after 6th March 2007.

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*Exchange gains and losses where loan not on arm's length terms*

- 15 (1) In paragraph 11A of Schedule 9 to FA 1996 (exchange gains and losses where loan not on arm's length terms), insert at the end—

“(7) Where—

- (a) a company would be treated as having a debtor relationship in any accounting period if a claim were made under paragraph 6D(2) of Schedule 28AA to the Taxes Act 1988 in relation to that period, and
- (b) for that period there is a connection between that company and the company which would have the corresponding creditor relationship,

it shall be assumed that such a claim is made for the purpose of determining the debits or credits to be brought into account for the purposes of this Chapter in respect of any exchange gains or losses arising in that period in respect of the liability representing that debtor relationship.

- (8) Section 87(3) and (4) (connection between a company and another person) apply for the purposes of sub-paragraph (7)(b) above as they apply for the purposes of section 87.

- (9) Where, by virtue of any claim made (or assumed by virtue of sub-paragraph (7) above to be made) under paragraph 6D(2) of Schedule 28AA to the Taxes Act 1988, more than one company is treated for any purpose as having a debtor relationship represented by the same liability—

- (a) the total debtor exchange gains must not exceed the total creditor exchange losses, and
- (b) the total debtor exchange losses must not exceed the total creditor exchange gains.

- (10) For the purposes of sub-paragraph (9) above—

- (a) any reference to the total debtor exchange gains is to the total amount of the credits brought into account for the purposes of this Chapter in respect of exchange gains from those debtor relationships,
- (b) any reference to the total debtor exchange losses is to the total amount of the debits brought into account for those purposes in respect of exchange losses from those debtor relationships,
- (c) any reference to the total creditor exchange gains is to the total amount of the credits brought into account for those purposes in respect of exchange gains from the corresponding creditor relationship, and
- (d) any reference to the total creditor exchange losses is to the total amount of the debits brought into account for those purposes in respect of exchange losses from that relationship.”

- (2) The amendment made by sub-paragraph (1) has effect in relation to loan relationships of any company in accounting periods ending on or after 6th December 2006.

- (3) But, in relation to an accounting period of any company beginning before that date, that amendment has no effect if the company ceases to be a party to the loan relationship before that date.

*Loan relationships and collective investment schemes*

- 16 (1) Paragraph 4 of Schedule 10 to FA 1996 (company holdings in unit trusts and offshore funds) is amended as follows.
- (2) In sub-paragraph (2) (relevant holding treated as rights under creditor relationship), for “and (4)” substitute “to (5)”.
- (3) After sub-paragraph (4) insert—
- “(5) In determining the debits and credits under sub-paragraph (3) there shall be left out of account amounts relating to any investment or liability of the scheme or fund where—
- (a) the investment was made, or the liability was incurred, with the relevant avoidance intention, or
- (b) any transaction (or series of transactions) was entered into in relation to the investment or liability with that intention.
- (6) The relevant avoidance intention is the intention of—
- (a) eliminating or reducing the credits to be brought into account for the purposes of this Chapter as respects the company’s relevant holdings, or
- (b) creating or increasing the debits to be so brought into account.”
- (4) In the case of amounts relating to investments, the amendments made by this paragraph have effect in relation to accounting periods ending on or after 6th March 2007.
- (5) But in that case, in relation to accounting periods beginning before that date, amounts are to be left out of account as a result of those amendments only if they relate to any time on or after that date.
- (6) In the case of amounts relating to liabilities, those amendments have effect in relation to accounting periods ending on or after 9th May 2007.
- (7) But in that case, in relation to accounting periods beginning before that date, amounts are to be left out of account as a result of those amendments only if they relate to any time on or after that date.

*Plant or machinery subject to a lease and finance leaseback*

- 17 (1) Chapter 17 of Part 2 of CAA 2001 (plant and machinery allowances: anti-avoidance) is amended as follows.
- (2) In section 228A(2) (application of sections 228B to 228D in case of a lease and finance leaseback), for “Sections 228B to 228D” substitute “Sections 228B and 228C”.
- (3) In section 228F (lease and finance leaseback)—
- (a) in subsection (1), for “Sections 228B, 228C and 228D” substitute “Sections 228B and 228C”,

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- (b) omit subsection (4), and
  - (c) in subsection (8), for “sections 228B to 228D” substitute “sections 228B and 228C” and omit paragraph (b) (together with the “and” before it).
- (4) In section 774E(5)(b) of ICTA (structured finance arrangements: exceptions), for “sections 228B to 228D” substitute “sections 228B and 228C”.
- (5) The amendments made by this paragraph have effect in relation to post-commencement rentals that fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account.
- (6) In this paragraph—
- “post-commencement period of account” means any period of account ending on or after 6th December 2006, and
  - “post-commencement rental” means—
    - (a) any amount receivable on or after 6th December 2006 in respect of any period beginning on or after that date, or
    - (b) the appropriate fraction of any amount receivable on or after that date in respect of any period beginning before, and ending on or after, that date,
 but does not include any amount received before that date.
- (7) For this purpose the “appropriate fraction”, in relation to any amount received in respect of any period, means the fraction—
- $$\frac{\text{PCP}}{\text{WP}}$$
- where—
- “PCP” means the number of days in the part of the period falling on or after 6th December 2006, and
  - “WP” means the number of days in the whole of the period.
- (8) Sub-paragraph (9) applies if the amounts that, in accordance with section 228D of CAA 2001 as applied by section 228F of that Act, fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account comprise both post-commencement rentals and other amounts.
- (9) For the purposes of section 228D of CAA 2001 as applied by section 228F of that Act, the amount of the gross earnings is taken to be so much of the gross earnings as, on a just and reasonable basis, relates to those other amounts.
- “Gross earnings” has the meaning given by section 228D(5) of CAA 2001.

*Derivative contracts: contracts treated for accounting purposes as financial asset or liability*

- 18 (1) In paragraph 17A of Schedule 26 to FA 2002 (computation in accordance with generally accepted accounting practice), after sub-paragraph (1) insert—
- “(1A) But, in the case of a contract which is a derivative contract for the purposes of this Schedule by virtue of paragraph 3(1)(b) (contracts treated for accounting purposes as financial asset or liability), the amounts to be so brought into account as respects the contract must be determined on the basis of fair value accounting.”



- (2) The amendment made by sub-paragraph (1) has effect in relation to periods of account ending on or after 6th March 2007.
- (3) But, in relation to a period of account beginning before that date, the fair value of the derivative contract at the beginning of that period is to be taken to be the carrying value of the contract recognised for accounting purposes at the beginning of that period.
- (4) For this purpose “carrying value” has the same meaning as it has for the purposes of paragraph 50A of Schedule 26 to FA 2002.

*Derivative contracts: transfers of value to connected companies*

- 19 (1) Paragraph 26 of Schedule 26 to FA 2002 (transfers of value to connected companies) is amended as follows.
- (2) In sub-paragraph (1)(a) (transfer of value between connected companies as a result of expiry of option), for “the expiry of an option of a company which, until its expiry,” substitute “the failure to exercise in full all the rights under an option of a company which, until that failure,”.
  - (3) In sub-paragraph (2) (rules for determining whether there is a transfer of value)—
    - (a) in paragraph (a), for “the option would not have expired” substitute “all the rights under the option would have been exercised in full”, and
    - (b) in paragraph (b), for “it would have been exercised on the date on which it expired” substitute “all those rights would have been exercised in full on the latest date on which they were exercisable”.
  - (4) In sub-paragraph (3) (transferor to bring into account amount in respect of the option), for “the expiry of the option” substitute “an option”.
  - (5) In sub-paragraph (4) (period in which amount is to be brought into account and the amount to be brought into account)—
    - (a) in paragraph (a), after “the option expired” insert “or would have expired if none of the rights under it had been exercised”, and
    - (b) for paragraph (b) substitute—
      - “(b) the appropriate amount—
        - (i) if the option expired, is the amount (if any) paid by the transferor to the transferee for the grant of the option by the transferee, and
        - (ii) if any rights under the option were exercised (in whole or in part), is the amount (if any) so paid less so much of it as is referable, on a just and reasonable basis, to the rights which have been so exercised.”
  - (6) The amendments made by this paragraph have effect in relation to any failure on or after 6th March 2007 to exercise in full all the rights under an option.