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SCHEDULES

SCHEDULE 24

Section 48

DISGUISED INTEREST

Amendments of Part 6 of CTA 2009

- 1 Part 6 of CTA 2009 (relationships treated as loan relationships etc) is amended as follows.
- 2 (1) Section 477(2) (overview of Part 6) is amended as follows.
 - (2) After paragraph (a) insert—

“(aa) Chapter 2A (disguised interest),”.
 - (3) For paragraph (f) substitute—

“(f) Chapter 6A (shares accounted for as liabilities),”.
- 3 After Chapter 2 insert—

“CHAPTER 2A

DISGUISED INTEREST

Overview

486A) This Chapter provides for Part 5 to apply in relation to returns which are economically equivalent to interest (see section 486B).

- (2) For exclusions from this Chapter, see—
 - (a) section 486C (return otherwise taxable),
 - (b) section 486D (arrangement having no tax avoidance purpose), and
 - (c) section 486E (excluded shares).

Disguised interest to be regarded as profit from loan relationship

486B) Where a company is party to an arrangement which produces for the company a return in relation to any amount which is economically equivalent to interest, Part 5 applies as if the return were a profit arising to the company from a loan relationship.

- (2) For the purposes of this Chapter a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
 - (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,

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- (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
 - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (3) In subsection (2)(c) “the relevant time” means the time when the company becomes party to the arrangement or, if later, when the arrangement begins to produce a return for the company.
- (4) The credits and debits to be brought into account for the purposes of Part 5 in respect of the return must be determined on an amortised cost basis of accounting.
- (5) But if any of the return is not recognised in determining the company's profit or loss for any period it is to be treated as recognised using an amortised cost basis of accounting.
- (6) Where two or more persons are party to an arrangement which produces a return such as is mentioned in subsection (1)—
- (a) for the persons (when taken together), but
 - (b) not for either (or any) of them individually,
- this section applies as if there were a profit arising to such (if any) of them as are companies from a loan relationship of so much of the return as is just and reasonable.
- (7) The only amounts which may be brought into account for corporation tax purposes in relation to a return such as is mentioned in subsection (1) in the case of any company are those which are brought into account in accordance with this section (but see section 486C).
- (8) In subsection (4) “credits” and “debits” include exchange gains and losses arising as a result of translating at different times the carrying value of the return or the amount by reference to which the return falls to be produced.
- (9) In this Chapter “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), other than one which constitutes a finance lease (within the meaning given by section 219 of CAA 2001).

Exclusion where return otherwise taxable

- 486Q) This Chapter does not apply to an arrangement which produces a return for a company if or to the extent that the return—
- (a) is charged to corporation tax as income of the company or brought into account as income of the company for corporation tax purposes no later than the time when amounts are brought into account in relation to the return in accordance with section 486B,
 - (b) arises from anything that would produce credits or debits in relation to the company under Part 7 (derivative contracts) or Part 8 (intangible fixed assets) but for any exception relating to particular credits or debits, or

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- (c) arises from anything that would produce credits or debits in relation to the company under Part 5 apart from this Chapter but for any exception relating to particular credits or debits.
- (2) Subsection (1)(b) does not disapply this Chapter in the case of a return in relation to which section 641 (derivative contracts taxed on chargeable gains basis) applies.

Exclusion where arrangement has no tax avoidance purpose

486D) This Chapter does not apply in relation to a return produced by an arrangement to which a company is a party unless it is reasonable to assume that the main purpose, or one of the main purposes, of the company being a party to the arrangement is to obtain a relevant tax advantage.

- (2) But a company for which a return is produced by an arrangement to which this Chapter would otherwise be prevented from applying by subsection (1) may elect that this Chapter is to apply in relation to the return.
- (3) An election under subsection (2)—
- (a) may not be made by a company if section 486B applies to the company in relation to the return in accordance with subsection (6) of that section,
 - (b) must be made no later than the time when the arrangement begins to produce a return for the company, and
 - (c) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return (or any part of it) is produced in a way which means that its treatment for corporation tax purposes is more advantageous to the company than it would be if it were—
- (a) charged to corporation tax as income of the company, or
 - (b) brought into account as income of the company for corporation tax purposes,
- at the time when amounts would be brought into account in relation to the return in accordance with section 486B.
- (5) Nothing in this section applies in relation to a company for an accounting period if the company is an excluded controlled foreign company.
- (6) For this purpose a company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
 - (b) are not so apportioned because of section 748(1) of that Act.

Excluded shares

486E) This Chapter does not apply in relation to an accounting period (“the relevant accounting period”) of a company (“the holding company”) for which an arrangement produces a return for the company if the arrangement involves only relevant shares held by the company throughout the relevant period.

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- (2) In this section “the relevant period” means the period—
- (a) beginning with the later of—
 - (i) the time when the holding company becomes party to the arrangement, and
 - (ii) the time when the arrangement begins to produce a return for the company, and
 - (b) ending with the earliest of—
 - (i) the end of the relevant accounting period,
 - (ii) the time when the holding company ceases to be party to the arrangement, and
 - (iii) the time when the arrangement ceases to produce a return for the company.
- (3) For the purposes of this section an arrangement “involves only” relevant shares if (and only if) the return produced reflects only an increase in the fair value of the shares.
- (4) For the purposes of subsection (3)—
- (a) “fair value”, in relation to relevant shares held by the holding company, means an amount which the company would obtain from a knowledgeable and willing purchaser of the shares dealing at arm's length, and
 - (b) there is an increase in the fair value of shares even if the increase is realised by the payment of a distribution in respect of the shares.
- (5) In this section “relevant shares” means shares which, throughout the relevant period, are—
- (a) fully paid-up shares of a relevant company, or
 - (b) shares of a company, other than a relevant company, which would be accounted for as a liability by the company in which they are shares in accordance with generally accepted accounting practice and which produce for the holding company a return in relation to any amount which is economically equivalent to interest (as to which see Chapter 6A).
- (6) For the purposes of subsection (5)(a) shares are fully paid-up if there are no actual or contingent obligations—
- (a) to meet unpaid calls on the shares, or
 - (b) to make a contribution to the capital of the company in which they are shares that could affect the value of the shares.
- (7) For the purposes of subsection (5) a company is “a relevant company” if—
- (a) it and the holding company are connected companies,
 - (b) it is a relevant joint venture company, or
 - (c) it is a relevant controlled foreign company.
- (8) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (7)(a).
- (9) For the purposes of subsection (7)(b) a company is a relevant joint venture company if—

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- (a) the holding company is one of two persons who, taken together, control it,
 - (b) the holding company is a person in whose case the 40% test in section 755D(3) of ICTA is satisfied, and
 - (c) the other is a person in whose case the 40% test in section 755D(4) of ICTA is satisfied.
- (10) Section 755D of ICTA (meaning of “control” etc) applies for the purposes of subsection (9)(a) as for those of Chapter 4 of Part 17 of that Act (controlled foreign companies), except that no rights and powers are attributed to a person by subsection (6)(c) or (d) of that section.
- (11) For the purposes of subsection (7)(c) a company is a relevant controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned to the holding company for the relevant accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
 - (b) are not so apportioned because of section 748(1) or (3) of that Act.
- (12) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this section.”

4 After Chapter 6 insert—

“CHAPTER 6A

SHARES ACCOUNTED FOR AS LIABILITIES

Introduction to Chapter

- 521A) This Chapter contains rules for Part 5 (and the other provisions of the Corporation Tax Acts) to apply in some cases as if at some times in the accounting period of a company (“A”) which holds shares of a certain kind in another company (“B”) the shares were rights under a creditor relationship of A.
- (2) See, in particular—
- (a) section 521B (application of Part 5 to some shares as rights under creditor relationship), and
 - (b) section 521C (which describes the shares to which the rules apply).
- (3) In this Chapter references to the investing company are to A and references to the issuing company are to B.
- (4) For the purposes of this Chapter, the definition of “share” in section 476(1) only applies so far as it provides that “share” does not include a share in a building society.
- (5) Section 550(3) (repos: ignoring effect on borrower of sale of securities) does not apply for the purposes of this Chapter.
- (6) See section 116B of TCGA 1992 for the effect for chargeable gains purposes of shares beginning or ceasing to be shares to which section 521C applies.

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Application of Part 5 to certain shares as rights under creditor relationship

- 521(B) This section applies in relation to the times in a company's accounting period when—
- (a) the company holds a share in another company, and
 - (b) section 521C (shares accounted for as liabilities) applies to the share.
- (2) Part 5 (and the other provisions of the Corporation Tax Acts) apply as if at those times—
- (a) the share were rights under a creditor relationship of the investing company, and
 - (b) any distribution in respect of the share were not a distribution (and accordingly is within Part 5).
- (3) Where Part 5 applies in relation to the investing company in accordance with subsection (2) it so applies as if the issuing company stood in the position of debtor as respects the debt in question.
- (4) No debits are to be brought into account by the investing company as respects the share but this does not affect debits to be brought into account in respect of exchange gains or losses.
- (5) Subsection (2)(b) does not affect the operation of Part 1 of Schedule 25 of ICTA (controlled foreign companies: acceptable distribution policy) (including as it continues to have effect in accordance with paragraph 8(1) of Schedule 16 to FA 2009).
- (6) In this Chapter references to “the share” are to the share mentioned in subsection (1).

Shares accounted for as liabilities

- 521(C) This section applies to the share if—
- (a) the share would be accounted for by the issuing company as a liability in accordance with generally accepted accounting practice,
 - (b) the share produces for the investing company a return in relation to any amount which is economically equivalent to interest,
 - (c) the issuing company and the investing company are not connected companies,
 - (d) the condition in subsection (4) is met,
 - (e) the share is not an excepted share (see section 521D), and
 - (f) the investing company holds the share for an unallowable purpose (see section 521E).
- (2) For the purposes of this section a return produced for a company by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
 - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and

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- (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (3) In subsection (2)(c) “the relevant time” means the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company.
- (4) The condition mentioned in subsection (1)(d) is that the share does not fall to be treated for the accounting period in question as if it were rights under a creditor relationship of the investing company because of section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights).
- (5) Section 466 (companies connected for an accounting period) applies for the purposes of this section.

Excepted shares

521D) A share is an excepted share for the purposes of section 521C if it is—

- (a) a qualifying publicly-issued share (see subsection (2)), or
 - (b) a share which mirrors a public issue (see subsections (3) and (4)).
- (2) A share is a “qualifying publicly-issued share” if—
- (a) it was issued by a company as part of an issue of shares to persons not connected with the company, and
 - (b) less than 10% of the shares in that issue are held by the investing company or persons connected with it.
- (3) The first case where shares (“the mirroring shares”) mirror a public issue is where—
- (a) a company (“company A”) issues shares (“the public issue”) to persons not connected with the company,
 - (b) within 7 days of that issue, one or more other companies (“companies BB”) issue the mirroring shares to company A on the same terms as the public issue or substantially the same terms,
 - (c) company A and companies BB are associated companies (see subsection (5)), and
 - (d) the total nominal value of the mirroring shares does not exceed the nominal value of the public issue.
- (4) The second case where shares (“the second level mirroring shares”) mirror a public issue is where, in the circumstances of the first case—
- (a) within 7 days of the public issue, one or more other companies (“companies CC”) issue the second level mirroring shares to one or more of companies BB on the same terms as the public issue or substantially the same terms,
 - (b) company A, companies BB and companies CC are associated companies (see subsection (5)), and
 - (c) the total nominal value of the second-level mirroring shares does not exceed the nominal value of the public issue.

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- (5) For the purposes of subsections (3) and (4) companies are associated companies if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of ICTA (group relief) (see section 413(3)(a) of that Act).

Unallowable purpose

- 521(F) For the purposes of section 521C, the investing company holds the share for an unallowable purpose if the main purpose, or one of the main purposes for which the company holds the share is to obtain a relevant tax advantage.
- (2) But the investing company may elect that this Chapter is to apply in relation to the share even though it would otherwise be prevented from applying by subsection (1)(f) of that section.
- (3) An election under subsection (2)—
- (a) must be made no later than the time when the investing company first holds the share or, if later, when the share begins to produce a return for the investing company, and
 - (b) is irrevocable.
- (4) In this section “obtain a relevant tax advantage” means secure that the return produced by the share (or any part of it) is received in a way that means that its treatment for corporation tax purpose is more advantageous to the investing company than it would be if it were—
- (a) charged to corporation tax as income of the investing company, or
 - (b) brought into account as income of the investing company for corporation tax purposes,
- at the time when amounts would be brought into account in relation to the return in accordance with section 521B.
- (5) Nothing in this section applies in relation to the investing company for an accounting period if it is an excluded controlled foreign company.
- (6) For this purpose the investing company is an excluded controlled foreign company if any of its chargeable profits (within the meaning of Chapter 4 of Part 17 of ICTA)—
- (a) are apportioned for the accounting period in accordance with section 752 of ICTA by virtue of section 747(3) of that Act, or
 - (b) are not so apportioned because of section 748(1) of that Act.

Shares becoming or ceasing to be shares to which section 521B applies

- 521(F) This section applies if at any time section 521B begins or ceases to apply in the case of a share held by the investing company.
- (2) The investing company is treated for the purposes of Part 5—
- (a) as having disposed of the share immediately before that time for consideration of an amount equal to the notional carrying value of the share at that time, and
 - (b) as having immediately reacquired it for consideration of the same amount.

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(3) In subsection (2) “notional carrying value”, in relation to the share, means the amount which would have been its carrying value in the accounts of the investing company if a period of account had ended immediately before section 521B began or ceased to apply in the case of the share and the investing company.

(4) For the purposes of subsection (3) “carrying value” has the same meaning as it has for the purposes of section 316 (see section 317).”

Amendments and repeals

5 (1) Section 116B of TCGA 1992 (shares beginning or ceasing to be shares to which section 523 of CTA 2009 applies) is amended as follows.

(2) In subsection (1) and the heading, for “522” substitute “ 521B ”.

(3) In subsection (1)(b), for “its fair value” substitute “ the notional carrying value of the share ”.

(4) In subsection (2), for the definition of “fair value” substitute—

““notional carrying value” has the same meaning as in subsection (2) of section 521F of CTA 2009 (see subsection (3) of that section),”.

(5) In that subsection, in the definition of “investing company”—

(a) for “7” substitute “ 6A ”, and

(b) for “with guaranteed returns) (see section 522(3))” substitute “ accounted for as liabilities) (see section 521A(3)) ”.

6 In section 26 of F(No.2)A 2005 (tax arbitrage), for subsection (10) substitute—

“(10) This subsection applies to an amount that is brought into account by virtue of Chapter 2A or 6A of Part 6 of CTA 2009 (shares treated as loan relationships).”

7 (1) Schedule 4 to CTA 2009 (index of expressions) is amended as follows.

(2) After the entry relating to “approved, approval (in relation to a share incentive plan) (in Chapter 1 of Part 11)” insert—

“arrangement (in Chapter 2A of Part 6) section 486B(9)”.

(3) Omit the entry relating to “the associated transactions condition (in Chapter 7 of Part 6)”.

(4) After the entry relating to “effective 51% subsidiary (in Part 8)” insert—

“economically equivalent to interest (in section 486B(2)).
Chapter 2A of Part 6)

(5) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute—

“the investing company (in Chapter 6A of section 521A(3)).
Part 6)

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(6) For the entry relating to “the investing company (in Chapter 7 of Part 5)” substitute—	
“the issuing company (in Chapter 6A of Part 6) substitute—	section 521A(3)”.
(7) Omit the entries relating to “the increasing value condition (in Chapter 7 of Part 6)” and “the redemption return condition (in Chapter 7 of Part 6)”.	
(8) In the entry relating to “share (in Part 5 and in Part 6 except for Chapter 7 of that Part)”, for “7” substitute “ 6A ”.	
(9) For the entries relating to “share (in Chapter 7 of Part 6)” and “the share (in Chapter 7 of Part 6) substitute—	
“share (in Chapter 6A of Part 6)	section 521A(4)
the share (in Chapter 6A of Part 6)	section 521B(6)”.

Repeals

- 8 In consequence of the amendments made by this Schedule, omit—
- (a) in ICTA—
 - (i) section 736C (deemed interest: cash collateral under stock lending arrangement), and
 - (ii) section 736D (quasi-stock lending arrangements and quasi-cash collateral),
 - (b) in FA 2004, sections 131 to 133 (companies in partnership), and
 - (c) in CTA 2009—
 - (i) Chapter 7 of Part 6 (shares with guaranteed returns etc),
 - (ii) Chapter 8 of that Part (returns from partnerships), and
 - (iii) section 547 (repo under arrangement designed to produce quasi-interest: tax avoidance).
- 9 Omit the following provisions (which relate to the provisions repealed by paragraph 8)—
- (a) in ICTA, sections 736B(4) and 807A(2B),
 - (b) in TCGA 1992, section 171(3A),
 - (c) in F(No.2)A 2005, in Schedule 7, paragraphs 5 and 9,
 - (d) in FA 2006, in Schedule 6, paragraphs 3 and 4,
 - (e) in ITA 2007, in Schedule 1, paragraphs 172 and 373, and
 - (f) in CTA 2009, in Schedule 1, paragraphs 215 and 571.
- 10 In section 542(2) of CTA 2009 (introduction to Chapter 10 of Part 6), for “547” substitute “ 546 ”.

Commencement

- 11 The amendments made by paragraphs 2(2) and 3 have effect in relation to any arrangement which produces for a company a return which is economically equivalent to interest if the company becomes a party to the arrangement on or after 22 April 2009.

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- 12 The amendments (and repeals) made by paragraphs 2(3) and 4 to 10 come into force on 22 April 2009.
- 13 (1) This paragraph applies where any of the provisions repealed by paragraph 8 applies in relation to anything done by a company before 22 April 2009 which amounts to becoming party to an arrangement (within the meaning given by section 486B(9) of CTA 2009).
- (2) The company is to be treated for the purposes of Chapter 2A of Part 6 of CTA 2009 as having become a party to the arrangement on that date.
- (3) But this paragraph does not apply in circumstances in which paragraph 15 does.
- 14 (1) This paragraph applies where Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009.
- (2) Section 116B(1) of TCGA 1992 is to be treated as applying as if section 523 of CTA 2009 ceased to apply in relation to the share on that date.
- (3) But this paragraph does not apply if paragraph 15 applies in relation to the share and the company.
- 15 (1) This paragraph applies where—
- (a) Chapter 7 of Part 6 of CTA 2009 applies in relation to a share held by a company immediately before 22 April 2009 by reason of the redemption return condition being met (see section 529 of that Act) (or would so apply but for the share not being designed to produce a return which equates in substance to the return on an investment of money at a commercial rate of interest), and
- (b) section 521B of CTA 2009 applies in relation to the share and the company on 22 April 2009.
- (2) Part 5 of CTA 2009 applies as if the company had acquired the share on 22 April 2009 for an amount equal to the notional carrying value of the share on that date.
- (3) In sub-paragraph (2) “notional carrying value” has the same meaning as in section 521F(2) of CTA 2009 (see subsection (3) of that section).
- (4) Section 521F of CTA 2009 does not apply by virtue of the coming into force of section 521B of that Act.
- 16 An election under—
- (a) section 486D(2) of CTA 2009, or
- (b) section 521E(2) of that Act,
- relating to a return which begins to be produced before 1 August 2009 can be made at any time before that date but only in relation to any return produced on or after the day on which the election is made.

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