

SCHEDULES

SCHEDULE 9

Section 28

GROUP RELIEF: PREFERENCE SHARES

Amendments of Schedule 18 to ICTA

- 1 Schedule 18 to ICTA (definitions relating to group relief) is amended as follows.
- 2 (1) Paragraph 1 is amended as follows.
 - (2) In sub-paragraph (2), for “fixed-rate” substitute “relevant”.
 - (3) In sub-paragraph (3)—
 - (a) for “fixed-rate” substitute “relevant”,
 - (b) for paragraph (c) substitute—
 - “(c) either—
 - (i) do not carry a right to dividends, or
 - (ii) carry a right to dividends to which paragraph 1A applies; and”, and
 - (c) in paragraph (d), for “that new consideration” substitute “the new consideration received by the company in respect of the issue of the shares”.
- 3 After that paragraph insert—
 - “1A (1) This paragraph applies to a right to dividends carried by shares in a company if—
 - (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares, and
 - (b) condition A, B or C is met.
 - (2) Condition A is that—
 - (a) the dividends are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
 - (b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.
 - (3) Condition B is that—
 - (a) the dividends are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—
 - (i) a standard published rate of interest, or
 - (ii) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, and

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- (b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.
- (4) Condition C is that condition A or B would be met but for sub-paragraph (2)(b) or (3)(b), and—
 - (a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in relevant circumstances, or
 - (b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in relevant circumstances.
- (5) For the purposes of sub-paragraph (4) a company reduces the amount of, or does not pay, dividends “in relevant circumstances” if—
 - (a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or
 - (b) it does so for the purpose of following a recommendation of a relevant regulatory body.
- (6) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of sub-paragraph (5)(a).
- (7) In sub-paragraph (5)(b) “relevant regulatory body” means—
 - (a) in relation to a dividend paid by a company that is authorised for the purposes of the Financial Services and Markets Act 2000, the Financial Services Authority, and
 - (b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).
- (8) In this paragraph “new consideration” has the same meaning as in section 254.”

4 In paragraph 5B(4)(b), for “fixed-rate” substitute “relevant”.

Commencement

5 The amendments made by this Schedule have effect for accounting periods beginning on or after 1 January 2008.

Election to opt out of changes in relation to pre-existing etc shares

6 If a company so elects, the amendments made by this Schedule do not have effect in relation to shares issued by the company—

- (a) before 18 December 2008, or
- (b) on or after that date under an agreement entered into before that date.

7 An election under paragraph 6—

- (a) must be made by the company by being included in its company tax return for the first accounting period of the company beginning on or after 1

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- January 2008 (and may be included in the return originally made or by amendment), and
- (b) is irrevocable.

Paragraph 2(7) of Schedule 25 to ICTA

- 8 The amendments made by this Schedule do not have effect for the purposes of paragraph 2(7) of Schedule 25 to ICTA (controlled foreign companies: definition of non-voting fixed-rate preference shares).