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## SCHEDULES

### SCHEDULE 2 **U.K.**

Section 32

#### RESTRICTIONS APPLYING TO CERTAIN DEDUCTIONS MADE BY BANKING COMPANIES

#### PART 1 **U.K.**

##### MAIN PROVISIONS

1 In CTA 2010, after Part 7 insert—

#### “PART 7A **U.K.**

##### BANKING COMPANIES

#### CHAPTER 1 **U.K.**

##### INTRODUCTION

#### Overview of Part

269A(1) This Part contains provision about banking companies.

- (2) Chapter 2 defines “banking company” and contains other definitions applying for the purposes of this Part.
- (3) Chapter 3 contains provision restricting the amount of certain deductions which a banking company may make in calculating its taxable total profits for an accounting period.

#### CHAPTER 2 **U.K.**

##### KEY DEFINITIONS

“Banking company”

#### Meaning of “banking company”

269B(1) In this Part “banking company”, in relation to an accounting period, means—

- (a) a company which meets conditions A to E,
- (b) a company which—
  - (i) meets conditions A and B, and

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- (ii) is a member of a partnership which meets conditions C to E, or
- (c) a building society.

In subsections (4) to (6) “the relevant entity” means the company or the partnership (as the case may be).

- (2) Condition A is that at any time during the accounting period the company—
  - (a) is a UK resident company, or
  - (b) is a company which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (3) Condition B is that the company is not an excluded entity at any time during the accounting period (see section 269BA).
- (4) Condition C is that, at any time during the accounting period, the relevant entity is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act).
- (5) Condition D is that, at any time during the accounting period—
  - (a) the relevant entity's activities include the relevant regulated activity described in the provision mentioned in section 269BB(a),
  - (b) the relevant entity is both an IFPRU 730k firm and a full scope IFPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 269BB(b) to (f), or
  - (c) the relevant entity is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 269BB(b) to (f).
- (6) Condition E is that the relevant entity carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade.
- (7) See also section 269BC (which contains definitions of terms used in this section).

### **Excluded entities**

- 269BA(1) For the purposes of section 269B “excluded entity” means any of the following entities—
- (a) an insurance company or an insurance special purpose vehicle;
  - (b) an entity which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or insurance special purpose vehicle which is a member of the group;
  - (c) an entity which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme;
  - (d) an investment trust;
  - (e) an entity which does not carry on any relevant regulated activities other than asset management activities;

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- (f) an exempt IFPRU commodities firm or exempt BIPRU commodities firm;
  - (g) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives;
  - (h) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences—
    - (i) as principal with persons all or all but an insignificant proportion of whom are retail clients, or
    - (ii) with another person to enable the entity or other person to deal in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients;
  - (i) a society incorporated under the Friendly Societies Act 1992;
  - (j) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));
  - (k) a building society.
- (2) For the meaning of “relevant regulated activity”, see section 269BB.

See also section 269BC (which contains definitions of other terms used in this section).

### **Relevant regulated activities**

269BB In this Part “relevant regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—

- (a) article 5 (accepting deposits);
- (b) article 14 (dealing in investments as principal);
- (c) article 21 (dealing in investments as agent);
- (d) article 25 (arranging deals in investments);
- (e) article 40 (safeguarding and administering investments);
- (f) article 61 (entering into regulated mortgage contracts).

### **Banking companies: supplementary definitions**

269B(1) This section contains definitions of terms used in sections 269B to 269BB (and this section).

- (2) “Asset management activities” means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—
- (a) acting as the operator of a collective investment scheme (within the meaning of Part 17 of FISMA 2000: see sections 235 and 237 of that Act),
  - (b) acting as a discretionary investment manager for clients none of which is a linked entity (see subsection (3)), and

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- (c) acting as an authorised corporate director.
- (3) In subsection (2)(b) “linked entity”, in relation to an entity (“E”), means—
- (a) a member of the same group as E,
  - (b) a company in which a company which is a member of the same group as E has a major interest (within the meaning of Part 5 of CTA 2009: see section 473 of that Act), or
  - (c) a partnership the members of which include an entity—
    - (i) which is a member of the same group as E, and
    - (ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the relevant accounting period is at least a 40% share (see Part 17 of CTA 2009 for provisions about shares of partnership profits and losses).
- “The relevant accounting period” means the accounting period referred to in section 269B(3).
- (4) “Building society” has the same meaning as in the Building Societies Act 1986.
- (5) “Insurance company” and “insurance special purpose vehicle” have the meanings given by sections 65 and 139 of FA 2012 respectively.
- (6) “Partnership” includes—
- (a) a limited liability partnership, and
  - (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,
- and “member”, in relation to a partnership, is to be read accordingly.
- (7) The terms in subsection (8)—
- (a) in relation to a PRA-authorised person, have the meaning given by the PRA Handbook;
  - (b) in relation to any other authorised person, have the meaning given by the FCA Handbook.
- (8) The terms referred to in subsection (7) are—
- “authorised corporate director”;
  - “BIPRU 730k firm”;
  - “contracts for differences”;
  - “discretionary investment manager”;
  - “exempt BIPRU commodities firm”;
  - “exempt IFPRU commodities firm”;
  - “full scope BIPRU investment firm”;
  - “full scope IFPRU investment firm”;
  - “IFPRU 730k firm”;
  - “pension scheme”;
  - “principal”;
  - “retail client”.
- (9) A company or partnership which would be a BIPRU 730k firm and a full scope BIPRU investment firm by virtue of activities carried on in the United

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Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one for the purposes of section 269B.

(10) A company or partnership which would be an IFPRU 730k firm and a full scope IFPRU investment firm by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one for the purposes of section 269B.

(11) In subsection (7)—

“authorised person” and “PRA-authorised person” have the same meaning as in FISMA 2000;

“the FCA Handbook” means the Handbook made by the Financial Conduct Authority under FISMA 2000 (as that Handbook has effect from time to time);

“the PRA Handbook” means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time).

“Group”

### Meaning of “group”

269B(1) In this Part “group” means a group for the purposes of—

- (a) those provisions of international accounting standards relating to the preparation of consolidated financial statements (whether or not the company that is the parent within the meaning of those provisions (“the parent company”) prepares financial statements under those standards), or
- (b) in a case where subsection (2) applies, those provisions of US GAAP which relate to the preparation of consolidated financial statements.

(2) This subsection applies if—

- (a) as at the end of a period of account of the parent company—
  - (i) the parent company is resident in a territory outside the United Kingdom,
  - (ii) generally accepted accounting practice for companies resident in that territory is or includes US GAAP, and
  - (iii) the parent company is a parent for the purposes of those provisions of US GAAP which relate to the preparation of consolidated financial statements (as well as being a parent for the purposes of the provisions mentioned in subsection (1)(a)), and
- (b) the parent company prepares consolidated financial statements for the period of account under US GAAP.

(3) Accordingly, for the purposes of this Part a company is a member of a group if—

- (a) it is the parent company in relation to the group, or
- (b) it is a member of the group for the purposes of the provisions mentioned in subsection (1)(a) or (b) (as the case may be).

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- (4) In this section “US GAAP” means United States Generally Accepted Accounting Principles.
- (5) Section 1127(1) and (3) (meaning of “generally accepted accounting practice”) do not apply for the purposes of this section.

*Power to make consequential changes*

**Power to make consequential changes**

- 269B(1) The Treasury may by regulations make such amendments of this Part as they consider appropriate in consequence of—
- (a) any change made to, or replacement of, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (or any replacement);
  - (b) any change made to, or replacement of, the FCA Handbook or the PRA Handbook (or any replacement);
  - (c) any change in international accounting standards or US GAAP;
  - (d) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made).
- (2) In this section—
- “the FCA Handbook” and “the PRA Handbook” have the meaning given by section 269BC(11);
- “US GAAP” has the meaning given by section 269BD(4).

**CHAPTER 3** **U.K.**

RESTRICTIONS ON OBTAINING CERTAIN DEDUCTIONS

*Introduction*

**Overview of Chapter**

- 269(1) This Chapter contains provision restricting the amount of certain deductions which a banking company may make in calculating its taxable total profits for an accounting period.
- (2) Sections 269CA to 269CD contain the restrictions.
  - (3) Sections 269CE to 269CH contain exceptions to the restrictions.
  - (4) Section 269CK contains anti-avoidance provision.
  - (5) Sections 269CL to 269CN contain supplementary provision and definitions.
  - (6) For the meaning of “banking company”, see section 269B.

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### *Restrictions on obtaining certain deductions*

#### **Restriction on deductions for trading losses**

269C(A) This section has effect for determining the taxable total profits of a banking company for an accounting period.

- (2) Any deduction made by the company for the accounting period in respect of a pre-2015 carried-forward trading loss may not exceed 50% of the company's relevant trading profits for the accounting period.

Section 269CD contains provision for calculating a company's relevant trading profits for an accounting period (see step 5 in subsection (1) of that section).

- (3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.
- (4) In this Chapter “pre-2015 carried-forward trading loss”, in relation to a company and an accounting period (“the current accounting period”), means a loss which—
- (a) was made in a trade of the company in an accounting period ending before 1 April 2015, and
  - (b) is carried forward to the current accounting period under section 45 (carry forward of trade loss against subsequent trade profits).
- (5) See also sections 269CE to 269CH (losses to which restrictions do not apply).

#### **Restriction on deductions for non-trading deficits from loan relationships**

269C(B) This section has effect for determining the taxable total profits of a banking company for an accounting period.

- (2) Any deduction made by the company for the accounting period in respect of a pre-2015 carried-forward non-trading deficit may not exceed 50% of the company's relevant non-trading profits for the accounting period.

Section 269CD contains provision for calculating a company's relevant non-trading profits for an accounting period (see step 6 in subsection (1) of that section).

- (3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.
- (4) In this Chapter “pre-2015 carried-forward non-trading deficit”, in relation to a company and an accounting period (“the current accounting period”), means a non-trading deficit—
- (a) which the company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending before 1 April 2015, and
  - (b) which is carried forward under section 457 of that Act (carry forward of deficits to accounting periods after deficit period) to be set off against non-trading profits of the current accounting period.

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- (5) In subsection (4) “non-trading profits” has the same meaning as in section 457 of CTA 2009.
- (6) See also sections 269CE to 269CH (losses to which restrictions do not apply).

### **Restriction on deductions for management expenses etc**

269C(1) This section has effect for determining the taxable total profits of a banking company for an accounting period.

- (2) Any deduction made by the company for the accounting period in respect of pre-2015 carried-forward management expenses may not exceed the relevant maximum (see subsection (7)).
- (3) But subsection (2) does not apply where the amount given by step 1 in section 269CD(1) is not greater than nil.
- (4) In this Chapter “pre-2015 carried-forward management expenses”, in relation to a company and an accounting period (“the current accounting period”), means amounts falling within subsection (5) or (6).

See also sections 269CE to 269CH (losses to which restrictions do not apply).

- (5) The amounts within this subsection are amounts—
  - (a) which fall within subsection (2) of section 1223 of CTA 2009 (carrying forward expenses of management and other amounts),
  - (b) which—
    - (i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending before 1 April 2015, or
    - (ii) in the case of qualifying charitable donations, were made in such an accounting period, and
  - (c) which are treated by section 1223(3) of CTA 2009 as expenses of management deductible for the current accounting period.
- (6) The amounts within this subsection are amounts of loss which—
  - (a) were made in an accounting period ending before 1 April 2015, and
  - (b) are treated by section 63(3) (carrying forward certain losses made by company with investment business which ceases to carry on UK property business) as expenses of management deductible for the current accounting period for the purposes of Chapter 2 of Part 16 of CTA 2009.
- (7) The relevant maximum is determined as follows—
 

*Step 1* Calculate 50% of the company's relevant profits for the accounting period. Section 269CD contains provision for calculating a company's relevant profits for an accounting period.

*Step 2* Calculate the sum of any deductions made by the company for the accounting period which are—

  - (a) deductions in respect of a pre-2015 carried-forward trading loss, or



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(b) deductions in respect of a pre-2015 carried-forward non-trading deficit.

*Step 3* The relevant maximum is the difference between the amount given by step 1 and the amount given by step 2. If the amount given by step 1 does not exceed the amount given by step 2, the relevant maximum is nil.

### **Relevant profits**

269CD) To determine a company's relevant profits for an accounting period—

*Step 1* Calculate the company's total profits for the accounting period, ignoring any pre-2015 carried-forward trading losses or pre-2015 carried-forward non-trading deficits. (If the amount given by this step is not greater than nil, no further steps are to be taken: see sections 269CA(3), 269CB(3) and 269CC(3).)

*Step 2* Divide the amount given by step 1 into profits that are profits of a trade of the company (the company's "trade profits") and profits that are not profits of a trade of the company (the company's "non-trading profits").

*Step 3* Calculate the proportion ("the trading proportion") of the amount given by step 1 that consists of the company's trade profits and the proportion ("the non-trading proportion") of that amount that consists of its non-trading profits.

*Step 4* Calculate the sum of any amounts which can be relieved against the company's total profits for the accounting period (as calculated in accordance with step 1), ignoring the amount of any excluded deductions for the accounting period (see subsection (2)).

*Step 5* Deduct the trading proportion of the amount given by step 4 from the company's trade profits for the accounting period. The amount given by this step is the company's relevant trading profits for the accounting period. If the amount given by this step is not greater than nil, the company's relevant trading profits for the accounting period are nil.

*Step 6* Deduct the non-trading proportion of the amount given by step 4 from the company's non-trading profits for the accounting period. The amount given by this step is the company's relevant non-trading profits for the accounting period. If the amount given by this step is not greater than nil, the company's relevant non-trading profits for the accounting period are nil.

*Step 7* The company's relevant profits for the accounting period are the sum of its relevant trading profits for the accounting period and its relevant non-trading profits for the accounting period.

- (2) The following are "excluded deductions" in relation to an accounting period ("the current accounting period")—
- (a) a deduction made in respect of pre-2015 carried-forward management expenses;
  - (b) a deduction for relief under section 37 (relief for trade losses against total profits) in relation to a loss made in an accounting period after the current accounting period;

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- (c) a deduction for relief under section 260(3) of CAA 2001 (special leasing of plant or machinery: carry-back of excess allowances) in relation to capital allowances for an accounting period after the current accounting period;
- (d) a deduction for relief under section 459 of CTA 2009 (non-trading deficits from loan relationships) in relation to a deficit for a deficit period after the current accounting period.

*Losses to which restrictions do not apply*

**Losses arising before company began banking activity**

269C(E)) In this section “the first banking accounting period”, in relation to a company, means the accounting period in which the company first begins to carry on a relevant regulated activity.

- (2) References in this Chapter to a pre-2015 carried-forward trading loss do not include a loss which was made in a trade of a company in an accounting period ending before the first banking accounting period.
- (3) References in this Chapter to a pre-2015 carried-forward non-trading deficit do not include a non-trading deficit which a company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending before the first banking accounting period.
- (4) References in this Chapter to pre-2015 carried-forward management expenses, in relation to a company, do not include—
  - (a) any amounts falling within section 269CC(5) which—
    - (i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending before the first banking accounting period, or
    - (ii) in the case of qualifying charitable donations, were made in an accounting period ending before the first banking accounting period, or
  - (b) any amounts of loss falling within section 269CC(6) which were made in an accounting period ending before the first banking accounting period.
- (5) Section 269CL contains provision for determining when a company first begins to carry on a relevant regulated activity.

**Losses arising in company's start-up period**

269C(F)) References in this Chapter to a pre-2015 carried-forward trading loss do not include a loss which was made in a trade of a company in an accounting period ending in the company's start-up period.

- (2) References in this Chapter to a pre-2015 carried-forward non-trading deficit do not include a non-trading deficit which a company had from its loan relationships under section 301(6) of CTA 2009 for an accounting period ending in the company's start-up period.

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- (3) References in this Chapter to pre-2015 carried-forward management expenses, in relation to a company, do not include—
- (a) any amounts falling within section 269CC(5) which—
    - (i) for the purposes of Chapter 2 of Part 16 of CTA 2009 are referable to an accounting period ending in the company's start-up period, or
    - (ii) in the case of qualifying charitable donations, were made in such an accounting period, or
  - (b) any amounts of loss falling within section 269CC(6) which were made in an accounting period ending in the company's start-up period.
- (4) For the purposes of this Chapter any amounts which, by virtue of subsections (1) to (3), are not relevant carried-forward losses of a company are to be regarded as having been taken into account in determining the taxable total profits of the company for accounting periods ending before 1 April 2015 before any amounts which are relevant carried-forward losses of the company.
- (5) Subsection (6) applies where a company has an accounting period (“the straddling period”) beginning before, and ending after, the last day of its start-up period.
- (6) For the purposes of this section—
- (a) so much of the straddling period as falls within the start-up period, and so much of the straddling period as falls outside the start-up period, are treated as separate accounting periods, and
  - (b) any relevant carried-forward losses of the company for the straddling period are apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 (time basis), or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.
- (7) In subsection (6)(b) the reference to any relevant carried-forward losses of the company “for” the straddling period is a reference to—
- (a) any pre-2015 carried-forward trading loss which was made in a trade of the company in the straddling period,
  - (b) any pre-2015 carried-forward non-trading deficit which the company had from its loan relationships for the straddling period, and
  - (c) any pre-2015 carried-forward management expenses which are referable to, or were made in, the straddling period (as the case may be).
- (8) For provision about determining a company's start-up period, see section 269CG.

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### **The “start-up period”**

269C(1) In this Chapter the “start-up period”, in relation to a company (“company C”), means the period of 5 years beginning with the day on which company C first begins to carry on a relevant regulated activity (“the start-up day”).

This is subject to the following provisions of this section.

- (2) If on the start-up day—
  - (a) company C is a member of a group,
  - (b) there are one or more other members of the group that have carried on a relevant regulated activity while a member of the group, and
  - (c) none of those members first began to carry on such an activity more than 5 years before the start-up day,
 company C's start-up period is the period beginning with the start-up day and ending with the relevant group period.
- (3) The “relevant group period”, in relation to a group, means the period of 5 years beginning with the earliest day on which any member of the group first began to carry on a relevant regulated activity.
- (4) If on the start-up day—
  - (a) company C is a member of a group,
  - (b) there are one or more other members of the group that have carried on a relevant regulated activity while a member of the group, and
  - (c) any of those members first began to carry on such an activity more than 5 years before the start-up day,
 company C does not have a start-up period.
- (5) This subsection applies if—
  - (a) on a day falling within company C's start-up period (“the relevant day”), company C becomes a member of a group,
  - (b) one or more of the members of the group which on the relevant day carry on a relevant regulated activity first began to do so before the beginning of company C's start-up period, and
  - (c) the relevant regulated activities carried on by company C do not form a significant proportion of the relevant regulated activities carried on immediately after the relevant day by the members of the group as a whole.
- (6) Where subsection (5) applies, company C's start-up period—
  - (a) in the case where any of the members of the group first began to carry on a relevant regulated activity more than 5 years before the relevant day, ends immediately before the relevant day;
  - (b) in any other case, ends with the relevant group period.
- (7) This subsection applies if—
  - (a) on a day falling within company C's start-up period (“the relevant day”), another company that carries on a relevant regulated activity (“the new member”) becomes a member of a group of which company C is a member,

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- (b) the new member first began to carry on a relevant regulated activity before the beginning of company C's start-up period, and
  - (c) the relevant regulated activities carried on by the new member form a significant proportion of the relevant regulated activities carried on immediately after the relevant day by the members of the group as a whole.
- (8) Where subsection (7) applies, company C's start-up period—
- (a) in the case where the new member first began to carry on a relevant regulated activity more than 5 years before the relevant day, ends immediately before the relevant day;
  - (b) in any other case, ends with the relevant group period.
- (9) Any reference in this section to being, or becoming, a member of a group includes a reference to being, or becoming, a member of a partnership; and references to the “relevant group period” are to be read accordingly.
- (10) Section 269CL contains provision for determining when a company first begins to carry on a relevant regulated activity.

#### **Losses covered by carried-forward loss allowance**

- 269CH) This section applies to a banking company if—
- (a) it is a building society, or
  - (b) an amount of carried-forward loss allowance is allocated to the company by a building society in accordance with section 269CI or 269CJ.
- (2) If a banking company to which this section applies has an amount of carried-forward loss allowance (see subsection (5)), the company may designate as unrestricted losses any losses which, in relation to any accounting period, would (in the absence of this section) be relevant carried-forward losses.
- (3) A loss designated under this section as an unrestricted loss is to be treated for the purposes of this Chapter as if it were not a relevant carried-forward loss.
- (4) The amount of losses which a company may designate at any time must not exceed the amount of carried-forward loss allowance which the company has at that time.
- (5) The amount of carried-forward loss allowance which a company has at any time is the difference between the company's maximum available carried-forward loss allowance and the total amount of losses designated by the company under this section before that time.
- (6) The “maximum available carried-forward loss allowance” is—
- (a) in the case of a building society which has not made an allocation under section 269CI, £25,000,000;
  - (b) in the case of a building society which has made an allocation under section 269CI, the amount given by—

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$$(A - B) + C$$

where—

A is £25,000,000,

B is the sum of—

- (a) any amounts which it has allocated to another company under section 269CI, and
- (b) any amounts allocated to another company under section 269CJ which immediately before the allocation were amounts of carried-forward loss allowance which the building society had, and

C is the sum of any amounts allocated to the building society under section 269CJ;

- (c) in the case of any other company, the total amount of carried-forward loss allowance allocated to the company under section 269CI or 269CJ.
- (7) References in this Chapter to an amount of carried-forward loss allowance allocated to a company are references to an amount allocated to the company under section 269CI or 269CJ.
- (8) For the meaning of “relevant carried-forward loss”, see section 269CN.
- (9) For information about the procedure for making a designation under this section, see Schedule 18 to FA 1998, in particular Part 9E of that Schedule.

### **Allocation of carried-forward loss allowance within a group**

269C(1) This section applies where a building society—

- (a) is a member of a group, and
  - (b) has an amount of carried-forward loss allowance (see section 269CH(5)).
- (2) The building society may allocate some or all of that amount of carried-forward loss allowance to any other member of the group which is a banking company.
- (3) Where a building society makes an allocation under subsection (2), it must give HMRC a statement (a “statement of allocation”) which specifies—
- (a) the amount of carried-forward loss allowance which the building society had immediately before it made the allocation,
  - (b) the companies (“the relevant companies”) to which an amount of carried-forward loss allowance has been allocated,
  - (c) the amount of carried-forward loss allowance allocated to each of the relevant companies, and
  - (d) the total amount of carried-forward loss allowance allocated by the building society.

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- (4) The statement of allocation must be given to HMRC on or before—
- (a) the first day after the allocation on which the building society, or any of the relevant companies, delivers a company tax return which includes a designation made under section 269CH, or
  - (b) if earlier, the first day after the allocation on which a company tax return of the building society, or any of the relevant companies, is amended so as to include such a designation.

This is subject to subsection (5).

- (5) An officer of Revenue and Customs may provide that the statement of allocation may be given to HMRC on or before a later day specified by the officer.
- (6) An allocation made under subsection (2) is not effective unless the requirements of this section have been complied with.
- (7) A statement of allocation that has been given to HMRC under this section may not be amended or withdrawn.

This is subject to section 269CJ.

### **Re-allocation of carried-forward loss allowance**

269C(1) This section applies where—

- (a) a building society is a member of a group,
  - (b) the building society has given HMRC a statement of allocation in accordance with section 269CI,
  - (c) the building society, or any other member of the group that is a banking company, (the “designating company”) would, if it had an amount (or an additional amount) of carried-forward loss allowance, be able to designate an amount of losses under section 269CH equal to that amount, and
  - (d) that amount is greater than the amount of carried-forward loss allowance which the building society could allocate under section 269CI.
- (2) In this section the “available carried-forward loss allowance” means the total of any amounts of carried-forward loss allowance which any member of the group, other than the designating company, has (see section 269CH(5)).
- (3) The building society may—
- (a) allocate some or all of the available carried-forward loss allowance to the designating company, and
  - (b) provide that, to the extent that any of the amount allocated to the designating company under this subsection is an amount of carried-forward loss allowance which, immediately before the allocation, was an amount allocated to another company, that amount is no longer allocated to that other company.
- (4) Where a building society makes an allocation under subsection (3), it must give HMRC a statement (a “revised statement of allocation”) which specifies—

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- (a) the amount of the available carried-forward loss allowance immediately before the allocation,
  - (b) the companies which had an amount of carried-forward loss allowance immediately before the allocation, and the amount of carried-forward loss allowance which each of those companies had at that time, and
  - (c) the companies which have an amount of carried-forward loss allowance immediately after the allocation (“the relevant companies”), and the amount of carried-forward loss allowance which each of those companies has.
- (5) The revised statement of allocation must be given to HMRC on or before—
- (a) the first day after the allocation on which any of the relevant companies delivers a company tax return which includes a designation made under section 269CH, or
  - (b) if earlier, the first day after the allocation on which a company tax return of any of the relevant companies is amended so as to include such a designation.

This is subject to subsection (6).

- (6) An officer of Revenue and Customs may provide that the revised statement of allocation may be given to HMRC on or before a later day specified by the officer.
- (7) An allocation made under subsection (3) is not effective unless the requirements of this section have been complied with.
- (8) Except as provided for by this section, a revised statement of allocation that has been given to HMRC under this section may not be amended or withdrawn.

#### *Anti-avoidance*

#### **Profits arising from tax arrangements to be disregarded**

269C(1) This section applies if conditions A to C are met.

- (2) Condition A is that—
  - (a) the amount given by step 1 in section 269CD(1) as the total profits of a banking company for an accounting period includes profits which arise to the banking company as a result of any arrangements (“the tax arrangements”), and
  - (b) in the absence of those profits (“the additional profits”) any deduction which the banking company would be entitled to make for the accounting period in respect of any relevant carried-forward losses would be reduced.
- (3) Condition B is that the main purpose, or one of the main purposes, of the tax arrangements is to secure a relevant corporation tax advantage—
  - (a) for the banking company, or
  - (b) if there are any companies connected with that company, for the banking company and those connected companies (taken together).



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- (4) In this section “relevant corporation tax advantage” means a corporation tax advantage involving—
- (a) the additional profits, and
  - (b) the deduction of any relevant carried-forward losses from those profits.
- (5) Condition C is that, at the time when the tax arrangements were entered into, it would have been reasonable to assume that the tax value of the tax arrangements would be greater than the non-tax value of the tax arrangements.
- (6) The “tax value” of the tax arrangements is the total value of—
- (a) the relevant corporation tax advantage, and
  - (b) any other economic benefits derived by—
    - (i) the banking company, or
    - (ii) if there are any companies connected with that company, the banking company and those connected companies (taken together),as a result of securing the relevant corporation tax advantage.
- (7) The “non-tax value” of the tax arrangements is the total value of any economic benefits, other than those falling within subsection (6)(a) or (b), derived by—
- (a) the banking company, or
  - (b) if there are any companies connected with that company, the banking company and those connected companies (taken together),
- as a result of the tax arrangements.
- (8) If this section applies, the additional profits are not to be taken into account in calculating the banking company's relevant profits for the accounting period (see section 269CD).
- (9) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “corporation tax advantage” means—
- (a) a relief from corporation tax or increased relief from corporation tax,
  - (b) a repayment of corporation tax or increased repayment of corporation tax,
  - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax,
  - (d) the avoidance of a possible assessment to corporation tax, or
  - (e) the deferral of a payment of corporation tax or advancement of a repayment of corporation tax.

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### *Supplementary*

#### **When a company first begins to carry on relevant regulated activities**

- 269C(1) For the purposes of this Chapter, a company first begins to carry on a relevant regulated activity on a particular day if the company—
- (a) begins to carry on a relevant regulated activity on that day, and
  - (b) has not carried on any relevant regulated activity before that day.

This is subject to subsection (2).

- (2) Where—
  - (a) there is a transfer of a trade, and
  - (b) immediately before the transfer the predecessor carried on a relevant regulated activity,
 the successor is to be treated as having first begun to carry on a relevant regulated activity on the day on which the predecessor first began to carry on such an activity.
- (3) Section 940B (meaning of “transfer of a trade” etc) applies for the purposes of this section as it applies for the purposes of Chapter 1 of Part 22.

#### **Joint venture companies**

- 269CM(1) Where a company (“the joint venturer”), together with one or more other persons, jointly controls another company that is a joint venture (“the joint venture company”), the joint venture company is to be treated for the purposes of this Chapter as a member of any group of which the joint venturer is a member.
- (2) References in subsection (1) to a joint venture and to jointly controlling a company that is a joint venture are to be read in accordance with those provisions of international accounting standards which relate to joint ventures.

#### **Other definitions**

- 269CN In this Chapter—
- “banking company” has the meaning given by section 269B;
  - “building society” has the same meaning as in the Building Societies Act 1986;
  - “company tax return” has the same meaning as in Schedule 18 to FA 1998;
  - “group” has the meaning given by section 269BD;
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “partnership” includes—
    - (a) a limited liability partnership, and
    - (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

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and “member”, in relation to a partnership, is to be read accordingly;

“pre-2015 carried-forward management expenses” has the meaning given by section 269CC(4);

“pre-2015 carried-forward non-trading deficit” has the meaning given by section 269CB(4);

“pre-2015 carried-forward trading loss” has the meaning given by section 269CA(4);

“relevant carried-forward loss” means—

- (a) a pre-2015 carried-forward trading loss,
- (b) a pre-2015 carried-forward non-trading deficit, or
- (c) any pre-2015 carried-forward management expenses;

“relevant non-trading profits”, in relation to a company, means the amount given by step 6 in section 269CD(1);

“relevant profits”, in relation to a company, means the amount given by step 7 in section 269CD(1);

“relevant regulated activity” has the meaning given by section 269BB;

“relevant trading profits”, in relation to a company, means the amount given by step 5 in section 269CD(1);

“start-up period”, in relation to a company, has the meaning given by section 269CG.”

## **PART 2 U.K.**

### CONSEQUENTIAL AMENDMENTS

#### *FA 1998*

- 2 In Schedule 18 to FA 1998 (company tax returns, assessments and related matters), after Part 9D insert—

## **“PART 9E U.K.**

### DESIGNATION OF LOSSES AS UNRESTRICTED LOSSES FOR THE PURPOSES OF CHAPTER 3 OF PART 7A OF THE CORPORATION TAX ACT 2010

#### **Introduction**

- 83Y (1) This Part of this Schedule applies to the designation of losses within sub-paragraph (2) as unrestricted losses by a banking company under section 269CH of the Corporation Tax Act 2010 (losses covered by carried-forward loss allowance).
- (2) The losses mentioned in sub-paragraph (1) are losses which, in relation to any accounting period, would (in the absence of that section) be relevant carried-forward losses.

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- (3) Expressions used in this Part of this Schedule and in Chapter 3 of Part 7A of the Corporation Tax Act 2010 have the same meaning in this Part of this Schedule as they have in that Chapter.

### **Designation to be made in company tax return**

- 83YA (1) A designation to which this Part of this Schedule applies must be made by being included in the company's tax return for the accounting period for which the company makes a deduction in respect of the losses.
- (2) It may be included in the return originally made or by amendment.

### **Identification of losses**

- 83YB Where a company designates any relevant carried-forward loss in a company tax return, the return must specify—
- (a) the amount of the loss, and
  - (b) whether the loss is—
    - (i) a pre-2015 carried-forward trading loss,
    - (ii) a pre-2015 carried-forward non-trading deficit, or
    - (iii) pre-2015 carried-forward management expenses.

### **Amendment or withdrawal of designation**

- 83YC A designation to which this Part of this Schedule applies may be amended or withdrawn by the company only by amending its company tax return.”

#### *CTA 2009*

- 3 In section 1223 of CTA 2009 (carrying forward expenses of management and other amounts), in subsection (1)—
- (a) the words after “because” become paragraph (a), and
  - (b) after that paragraph insert “, or
    - (b) in the case of amounts falling within subsection (2)(c), section 269CC of CTA 2010 (restriction on deductions for management expenses) has effect for the accounting period.”

#### *CTA 2010*

- 4 In section 1 of CTA 2010 (overview of Act), in subsection (3)—
- (a) for “Parts 8” substitute “ Parts 7A ”, and
  - (b) before paragraph (a) insert—
    - “(za) banking companies (see Part 7A),”.
- 5 In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert—

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“banking company (in Part 7A)	section 269B”;
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“building society (in Chapter 3 of Part section 269CN”;  
7A)

“company tax return (in Chapter 3 of Part section 269CN”;  
7A)

“group (in Part 7A) section 269BD”;

“HMRC (in Chapter 3 of Part 7A) section 269CN”;

“partnership (in Chapter 3 of Part 7A) section 269CN”;

“pre-2015 carried-forward management section 269CC(4)”;  
expenses (in Chapter 3 of Part 7A)

“pre-2015 carried-forward non-trading section 269CB(4)”;  
deficit (in Chapter 3 of Part 7A)

“pre-2015 carried-forward trading loss section 269CA(4)”;  
(in Chapter 3 of Part 7A)

“relevant carried-forward loss (in section 269CN”;  
Chapter 3 of Part 7A)

“relevant non-trading profits (in section 269CN”;  
Chapter 3 of Part 7A)

“relevant profits (in Chapter 3 of Part section 269CN”;  
7A)

“relevant regulated activity (in Part 7A) section 269BB”;

“relevant trading profits (in Chapter 3 of section 269CN”;  
Part 7A)

“start-up period (in Chapter 3 of Part 7A) section 269CG”.

#### *TIOPA 2010*

- 6 (1) In Part 9A of TIOPA 2010 (controlled foreign companies), in Chapter 21 (management), section 371UD (relief against sum charged) is amended as follows.
- (2) In subsection (2), after “relevant allowance” insert “ (but see subsection (9)) ”.
- (3) At the end insert—

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- “(9) A company which is a banking company (within the meaning of Part 7A of CTA 2010) for the relevant corporation tax accounting period may not make a claim under subsection (2) in respect of a relevant allowance consisting of—
- (a) a pre-2015 carried-forward non-trading deficit (within the meaning of Chapter 3 of Part 7A of that Act), or
  - (b) pre-2015 carried-forward management expenses (within the meaning of that Chapter).”

### PART 3 U.K.

#### COMMENCEMENT AND ANTI-FORESTALLING PROVISION

##### *Commencement*

- 7 (1) The amendments made by paragraphs 1 to 5 of this Schedule have effect for the purposes of calculating the taxable total profits of companies for accounting periods beginning on or after 1 April 2015.
- (2) But section 269CK of CTA 2010 (inserted by this Schedule) does not have effect in relation to any arrangements made before 3 December 2014.
- (3) Sub-paragraph (4) applies where a company has an accounting period beginning before 1 April 2015 and ending on or after that date (“the straddling period”).
- (4) For the purposes of Chapter 3 of Part 7A of CTA 2010—
- (a) so much of the straddling period as falls before 1 April 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) the profits or losses of the company for the straddling period are apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 of CTA 2010 (time basis), or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.
- 8 (1) The amendments made by paragraph 6 of this Schedule (and the amendments made by paragraphs 1 to 5, so far as relating to those amendments) have effect for accounting periods of CFCs beginning on or after 1 April 2015.
- (2) Sub-paragraph (3) applies where a CFC has an accounting period beginning before 1 April 2015 and ending on or after that date (“the straddling period”).
- (3) For the purposes of the amendments made by paragraph 6—
- (a) so much of the straddling period as falls before 1 April 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amount charged on a company in accordance with section 371BC of TIOPA 2010 in relation to the straddling period is apportioned to the two separate accounting periods—
    - (i) on a time basis according to the respective lengths of the separate accounting periods, or

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- (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.
- (4) In determining whether an amount falls within section 371UD(9)(a) or (b) of TIOPA 2010 (inserted by this Schedule), paragraph 7(3) and (4) applies as it applies for the purposes of Chapter 3 of Part 7A of CTA 2010.
- (5) In this paragraph “CFC” has the same meaning as in Part 9A of TIOPA 2010.

*Anti-forestalling provision*

- 9 (1) This sub-paragraph applies if—
- (a) for the purposes of corporation tax a banking company has profits (“pre-commencement profits”) for an accounting period ending before 1 April 2015,
  - (b) in the absence of this paragraph the banking company would, for corporation tax purposes, be entitled to deduct from the pre-commencement profits for the accounting period an amount in respect of any relevant carried-forward losses,
  - (c) the pre-commencement profits arise as a result of any arrangements entered into on or after 3 December 2014, and
  - (d) the main purpose, or one of the main purposes, of the arrangements is to secure a corporation tax advantage as a result of the fact that Chapter 3 of Part 7A of CTA 2010 (inserted by this Schedule) is not to have effect for the accounting period for which the deduction would be made.
- (2) If sub-paragraph (1) applies, the banking company is not entitled to deduct from the pre-commencement profits any amount in respect of the relevant carried-forward losses.
- (3) Sub-paragraph (1) does not apply in relation to a banking company which falls within section 269B(5)(b) of CTA 2010 (inserted by this Schedule).
- (4) In this paragraph—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “corporation tax advantage” means—
- (a) a relief from corporation tax or increased relief from corporation tax,
  - (b) a repayment of corporation tax or increased repayment of corporation tax,
  - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax,
  - (d) the avoidance of a possible assessment to corporation tax, or
  - (e) the deferral of a payment of corporation tax or advancement of a repayment of corporation tax.
- (5) Terms used in this paragraph and in Chapter 3 of Part 7A of CTA 2010 have the same meaning in this paragraph as in that Chapter; and, so far as necessary for the purposes of this sub-paragraph, that Part is to be treated as having come into force on the same day as this paragraph.
- (6) This paragraph is treated as having come into force on 3 December 2014.

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- (7) Sub-paragraph (8) applies where a company has an accounting period beginning before 1 April 2015 and ending on or after that date (“the straddling period”).
- (8) For the purposes of this paragraph—
- (a) so much of the straddling period as falls before 1 April 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) the profits or losses of the company for the straddling period are apportioned to the two separate accounting periods—
    - (i) in accordance with section 1172 of CTA 2010 (time basis), or
    - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.



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