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SCHEDULES

SCHEDULE 9

GROUP RELIEF

PART I

GENERAL MODIFICATIONS

Interpretation

- 1 In this Part of this Schedule—
- (a) a "company owned by a consortium" means either such a trading company as is referred to in paragraph (a) or paragraph (b) of subsection (2) of section 258 of the Taxes Act or such a holding company as is referred to in paragraph (c) of that subsection (companies owned directly or indirectly by consortia);
 - (b) a "consortium claim" means a claim for group relief made by virtue of subsection (2) of section 258 of the Taxes Act;
 - (c) a "group claim" means a claim for group relief made by virtue of subsection (1) of that section ;
 - (d) a "group/consortium company" means a company which is both a member of a group of companies and a company owned by a consortium ;
 - (e) "relevant accounting period" means an accounting period beginning on or after 1st August 1985 ; and
 - (f) other expressions have the same meaning as in section 258 and the following sections of Chapter I of Part XI of the Taxes Act.

Claims for losses etc. of a group /consortium company

- 2 (1) For the purpose of a consortium claim in respect of the loss or other amount of any relevant accounting period of a group/ consortium company, that loss or other amount shall be treated as reduced (or, as the case may be, extinguished) by first deducting therefrom the potential relief attributable to group claims.
- (2) Subject to sub-paragraph (3) below, in relation to the loss or other amount of a relevant accounting period of a group/consortium company, the potential relief attributable to group claims is the aggregate amount of group relief that would be claimed if every company which, as a member of the same group of companies as the group /consortium company, could make a group claim in respect of that loss or other amount made such a claim for an amount which, when set against the claimant company's total profits for its corresponding accounting period, would equal those profits.

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- (3) Where for any accounting period another member of the group of companies of which the group/consortium company is a member has a loss or other amount available for relief and one or more group claims is or are in fact made in respect of that loss or other amount, account shall be taken of the relief so claimed before determining (in relation to the loss or other amount of the group/consortium company) the potential relief attributable to group claims under sub-paragraph (2) above.

Claims for relief by a group/consortium company

- 3 (1) In any case where—
- (a) a consortium claim is made by a group/consortium company in respect of a loss or other amount of an accounting period of a member of the consortium, and
 - (b) the corresponding accounting period of the group/consortium company is a relevant accounting period,
- the total profits of that accounting period of the group/consortium company, against a fraction of which that loss or other amount may be set off (in accordance with section 259(8)(b) of the Taxes Act), shall be treated as reduced (or, as the case may be, extinguished) by deducting therefrom the potential relief available to the group/consortium company by way of group claims.
- (2) Subject to sub-paragraph (3) below, in relation to a relevant accounting period of a group/consortium company, the potential relief available to the company by way of group claims is the maximum amount of group relief that could be claimed by the company for that accounting period on group claims relating to the losses or other amounts available for relief of other members of the group of companies of which the group/consortium company is a member.
- (3) Where another member of the group of companies of which the group/consortium company is a member in fact makes one or more group claims in respect of losses or other amounts of other members of the group, account shall be taken of the relief already claimed by that company in determining the potential relief available to the group/consortium company by way of group claims under sub-paragraph (2) above.

Trading losses to be set against profits before group relief

- 4 (1) Where a company owned by a consortium—
- (a) has in any relevant accounting period incurred such a loss as is referred to in section 259(1) of the Taxes Act, and
 - (b) has profits (of whatever description) of that accounting period against which that loss could be set off under subsection (2) of section 177 of that Act,
- the amount of that loss which is available to any member of the consortium on a consortium claim shall be determined on the assumption that the company owned by the consortium has made a claim under that subsection requiring the loss to be so set off.
- (2) Where the company referred to in sub-paragraph (1) above is a group/consortium company, the amount of the loss shall be determined under that sub-paragraph before any reduction is made under paragraph 2 above.

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Extension of scope of consortium relief

- 5 (1) This paragraph applies where—
- (a) a company (in this paragraph referred to as " the link company ") which is a member of a consortium is also a member of a group of companies; and
 - (b) the link company could (disregarding any deficiency of profits) make a consortium claim in respect of the loss or other amount eligible for relief of a relevant accounting period of a company owned by the consortium.
- (2) Subject to sub-paragraphs (3) and (4) below, a company (in this paragraph referred to as a group member ") which is a member of the group referred to in sub-paragraph (1)(a) above but is not itself a member of the consortium may make any consortium claim which could be made by the link company ; and the fraction which is appropriate under section 259(8) of the Taxes Act where a group member is the claimant company shall be the same as that which would be appropriate if the link company were the claimant company.
- (3) A group member may not, by virtue of sub-paragraph (2) above, make a consortium claim in respect of the loss or other amount of any relevant accounting period of a company owned by the consortium unless the claimant company was a member of the group concerned throughout the whole of the accounting period or, as the case may be, each accounting period of the link company which, if that company were making the claim, would be a corresponding accounting period in relation to the relevant accounting period concerned.
- (4) The maximum amount of relief which, in the aggregate, may be claimed by group members and the link company by consortium claims relating to the loss or other amount of any relevant accounting period of a company owned by the consortium shall not exceed the relief which could have been claimed by the link company (disregarding any deficiency of profits) if this paragraph had not been enacted.
- 6 (1) This paragraph applies where—
- (a) a company (in this paragraph referred to as "the link company") which is a member of a consortium is also a member of a group of companies ; and
 - (b) a company which is a member of that group of companies but is not itself a member of the consortium has for any relevant accounting period a loss or other amount available for relief;
- and, in relation to the link company, any reference in this paragraph to a group member is a reference to a company falling within paragraph (b) above.
- (2) Subject to the following provisions of this paragraph, a company owned by the consortium may make any consortium claim in respect of the loss or other amount referred to in sub-paragraph (1)(b) above which it could make if the group member were a member of the consortium at all times when the link company was such a member, but not at any other time.
- (3) The fraction which is appropriate under section 259(8) of the Taxes Act in relation to a consortium claim made by virtue of subparagraph (2) above shall be the same as that which would be appropriate if the link company were the surrendering company, except that the accounting period in respect of which the member's share in the consortium is to be ascertained shall be that of the group member which is in fact the surrendering company.
- (4) A company owned by the consortium may not, by virtue of sub-paragraph (2) above, make a consortium claim in respect of the loss or other amount of any relevant

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accounting period of a group member unless, throughout the whole of that accounting period, the group member was a member of the group of companies referred to in sub-paragraph (1) above.

- (5) For any accounting period of a company owned by the consortium (in this sub-paragraph referred to as "the claimant company's accounting period"), the maximum amount of relief which, in the aggregate, may be claimed by that company by consortium claims relating to the losses or other amounts of accounting periods of the link company and group members shall not exceed that fraction of the total profits of the claimant company's accounting period which would be brought into account under section 259(8)(b) of the Taxes Act on a consortium claim in respect of which—
- (a) the link company was the surrendering company ; and
 - (b) the link company's accounting period was the same as the claimant company's accounting period.

Restriction on consortium claims where companies join or leave consortium

- 7 (1) In any case where—
- (a) a consortium claim is made in respect of the loss or other amount of a relevant accounting period of a company owned by a consortium (in this paragraph that claim is referred to as "the primary claim", that company is re-referred to as "the principal surrendering company" and that accounting period is referred to as "the principal accounting period"), and
 - (b) the company making the primary claim or, if that claim is made by virtue of paragraph 5 above, the company which is the link company for the purposes of that paragraph was not a member of the consortium throughout the whole of the principal accounting period, and
 - (c) on or after the date on which the primary claim is made, a consortium claim is made which falls within sub-paragraph (2) below,
- no relief shall be allowed on the primary claim or, as the case may be, any relief which was so allowed shall be withdrawn.
- (2) A consortium claim is to be taken into account under subparagraph (1)(c) above if—
- (a) it is in respect of the loss or other amount of an accounting period of a surrendering company (being a company owned by the consortium referred to in sub-paragraph (1) above); and
 - (b) it is made by the company making the primary claim or, if that claim or the claim mentioned in this sub-paragraph is made by virtue of paragraph 5 above, by any other member of the group referred to in sub-paragraph (1) (a) of that paragraph; and
 - (c) at any time during the principal accounting period the surrendering company is a member of the same group of companies as the principal surrendering company ; and
 - (d) the accounting period to which the claim relates falls, in whole or in part, within the principal accounting period.
- (3) Where any relief which has been allowed is withdrawn by virtue of sub-paragraph (1) above, all such adjustments shall be made, whether by way of assessment or otherwise, as may be necessary in consequence of that withdrawal.

- 8 (1) In any case where—

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- (a) a company owned by a consortium makes a consortium claim (in this paragraph referred to as " the primary claim ") in respect of the loss or other amount of a relevant accounting period of a member of the consortium or, if the primary claim is made by virtue of paragraph 6 above, of a company which, in relation to that member of the consortium, is a group member, within the meaning of that paragraph, and
- (b) the member of the consortium concerned (whether as the surrendering company or the link company, within the meaning of paragraph 6 above) was not a member of the consortium throughout the whole of the relevant accounting period referred to in paragraph (a) above, and
- (c) on or after the date on which the primary claim is made, a consortium claim is made which falls within sub-paragraph (2) below,

no relief shall be allowed on the primary claim or, as the case may be, any relief which was so allowed shall be withdrawn.

- (2) A consortium claim is to be taken into account under subparagraph (1)(c) above if—
 - (a) it is made by a company owned by the consortium referred to in subparagraph (1) above ; and
 - (b) the company making the claim is a member of the same group of companies as the company making the primary claim; and
 - (c) the claim relates to the loss or other amount of an accounting period of the consortium member referred to in sub-paragraph (1) above or of a company which, in relation to that consortium member, is a group member, within the meaning of paragraph 6 above ; and
 - (d) the accounting period referred to in paragraph (c) above falls, in whole or in part, in the relevant accounting period referred to in subparagraph (1)(a) above.
- (3) Where any relief which has been allowed is withdrawn by virtue of subparagraph (1) above, all such adjustments shall be made, whether by way of assessment or otherwise, as may be necessary in consequence of that withdrawal.