

S C H E D U L E S

SCHEDULE 7

Section 33.

DEEP GAIN SECURITIES

1 Schedule 11 to the Finance Act 1989 (deep gain securities) shall be amended as follows.

2 In paragraph 1 (definition of deep gain securities) for sub-paragraph (3A) there shall be substituted—

“(3A) In the case of a security issued before 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity otherwise than in pursuance of the exercise by the person who holds the security for the time being of an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security’s issue) is certain or likely to occur.

(3B) In the case of a security issued on or after 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity otherwise than at the option of the person who holds the security for the time being and as regards which the following conditions are fulfilled (judged at the time of the security’s issue)—

- (a) the event occasioning redemption is such that, if it occurred and there was no provision for redemption, the interests of the person holding the security at the time of the occurrence might be adversely affected,
- (b) the event occasioning redemption is neither certain nor likely to occur,
- (c) the event occasioning redemption is not one of a number of events occasioning or allowing redemption before maturity at least one of which is certain or likely to occur, and
- (d) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might be expected to accrue from the provision for redemption.

(3C) The condition set out in sub-paragraph (3B)(a) above is fulfilled if it is fulfilled by reference to any one potential holder, whether or not it is fulfilled by reference to other potential holders.

(3D) In a case where—

- (a) the security is one which under the terms of issue can be converted into or exchanged for a security of a different kind, and
- (b) it falls to be decided whether the condition set out in paragraph (b) or (c) of sub-paragraph (3B) above is fulfilled,

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the condition concerned shall not be treated as fulfilled unless it is fulfilled having regard only to circumstances in which (judged at the time of the security's issue) the right to convert or exchange cannot be or is unlikely to be exercised.

(3E) In the case of a security issued on or after 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity at the option of the person who holds the security for the time being and as regards which the following conditions are fulfilled (judged at the time of the security's issue)—

- (a) the event allowing the option to be exercised is such that, if it occurred and there was no provision for redemption, the interests of the person holding the security at the time of the occurrence might be adversely affected,
- (b) the event allowing the option to be exercised is neither certain nor likely to occur,
- (c) the event allowing the option to be exercised is not one of a number of events occasioning or allowing redemption before maturity at least one of which is certain or likely to occur, and
- (d) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might be expected to accrue from the provision for redemption.

(3F) The condition set out in sub-paragraph (3E)(a) above is fulfilled if it is fulfilled by reference to any one potential holder, whether or not it is fulfilled by reference to other potential holders.

(3G) In a case where—

- (a) the security is one which under the terms of issue can be converted into or exchanged for a security of a different kind, and
- (b) it falls to be decided whether the condition set out in paragraph (b) or (c) of sub-paragraph (3E) above is fulfilled,

the condition concerned shall not be treated as fulfilled unless it is fulfilled having regard only to circumstances in which (judged at the time of the security's issue) the right to convert or exchange cannot be or is unlikely to be exercised.”

3

In paragraph 2 (definition of qualifying indexed securities) in sub-paragraph (13) for paragraphs (c) and (d) there shall be substituted—

- “(c) in the case of a security issued before 13th November 1991, any circumstances except circumstances in which the person who holds the security for the time being exercises an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security's issue) is certain or likely to occur;
- (d) in the case of a security issued on or after 13th November 1991, any circumstances for redemption which may be made before maturity otherwise than at the option of the person who holds the security for the time being and as regards which the conditions set out in paragraph 1(3B) above are fulfilled (judged at the time of the security's issue and read subject to paragraph 1(3C) and (3D) above);

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- (e) in the case of a security issued on or after 13th November 1991, any circumstances for redemption which may be made before maturity at the option of the person who holds the security for the time being and as regards which the conditions set out in paragraph 1(3E) above are fulfilled (judged at the time of the security's issue and read subject to paragraph 1(3F) and (3G) above)."

4 The following shall be inserted after paragraph 19—

"Early redemption: special rules

- 19A (1) Sub-paragraph (2) below applies where—
(a) a security is issued on or after 13th November 1991,
(b) it would be a deep gain security apart from paragraph 1(3B) or (3E) above,
(c) it is redeemed before maturity, and
(d) immediately before redemption it was held by a person connected with the person who issued it.
- (2) As regards the redemption, paragraphs 5 to 19 above shall have effect as if—
(a) the security were a deep gain security, and
(b) it had been acquired as such (whatever the time it was acquired).
- (3) Sub-paragraph (4) below applies where—
(a) the conditions set out in sub-paragraph (1)(a) to (c) above are fulfilled,
(b) the security was transferred in the period ending with redemption and beginning with the day falling one year before the day of redemption, and
(c) the transfer was by a person connected with the person who issued the security.
- (4) As regards the transfer, paragraphs 5 to 19 above shall have effect as if—
(a) the security were a deep gain security, and
(b) it had been acquired as such (whatever the time it was acquired).
- (5) Section 839 of the Taxes Act 1988 (connected persons) shall apply for the purposes of this paragraph."
- 5 (1) In paragraph 21 (non-gilts: special rules) in sub-paragraph (3) after "(1) above" there shall be inserted " , and subject to paragraph 21A below,".
- (2) The following paragraph shall be inserted after paragraph 21—
“21A (1) A security which (apart from this paragraph) would be a new would-be deep gain security for the purposes of paragraph 21(1) above is not such a security if the following three conditions are fulfilled.
(2) The first condition is that all the securities issued on the occasion of the original issue were issued before 13th November 1991.
(3) The second condition is that the security is issued on or after 13th November 1991.

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- (4) The third condition is that, even if paragraph 1(7) above did not prevent the security being a deep gain security, it would nevertheless not be a deep gain security if for the purposes of paragraph 1(2) above “redemption” did not include any redemption which may be made before maturity otherwise than in pursuance of the exercise by the person who holds the security for the time being of an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security’s issue) is certain or likely to occur.”

6 The following shall be inserted after paragraph 22B—

“No particular redemption date: special rule

- 22C (1) This paragraph applies to a security whose terms contain no particular date by which it is to be redeemed.
- (2) In the case of such a security the following expressions, wherever they appear in this Schedule, shall be construed as if the words “before maturity” were omitted—
- (a) the expression “redemption which may be made before maturity”;
 - (b) the expression “redemption before maturity”;
 - (c) the expression “redeemed before maturity”.

7 The amendments made by this Schedule shall be deemed always to have had effect.

8 Any such adjustment as is appropriate in consequence of this Schedule may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).