

SCHEDULES

SCHEDULE 22

TONNAGE TAX

PART VII

THE RING FENCE: GENERAL PROVISIONS

Accounting period ends on entry or exit

- 52 An accounting period ends (if it would not otherwise do so) when a company enters or leaves tonnage tax.

Tonnage tax trade

- 53 (1) The tonnage tax activities of a tonnage tax company are treated for corporation tax purposes as a separate trade (the company's "tonnage tax trade") distinct from all other activities carried on by the company.
- (2) Sub-paragraph (1) shall not be read as requiring a company to be treated—
- (a) as setting up and commencing a new trade on entry into tonnage tax, or
 - (b) as permanently ceasing to carry on a trade on leaving tonnage tax.

Profits of controlled foreign companies

- 54 (1) A tonnage tax company is not subject to any liability under section 747 of the Taxes Act 1988 in any accounting period in respect of profits of a controlled foreign company if in that period distributions of the controlled foreign company made to the tonnage tax company would be relevant shipping income of the latter (see paragraph 49).
- (2) Schedule 24 to that Act (assumptions for calculating chargeable profits of controlled foreign companies) has effect subject to the following provisions.
- (3) If a company in relation to which that Schedule applies—
- (a) is a member of a tonnage tax group, and
 - (b) is a tonnage tax company by virtue of the group's tonnage tax election, or would be if it were within the charge to corporation tax,
- it shall be assumed for the purposes for which that Schedule applies to be a single company that is a tonnage tax company.
- (4) Nothing in paragraph 5(1) of that Schedule (controlled foreign company assumed not to be member of a group) affects sub-paragraph (3) above.

For accounting periods ending before 1st April 2000 the reference to paragraph 5(1) has effect as a reference to paragraph 5 of that Schedule.

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- (5) Paragraph 20 of that Schedule (provisions for avoiding double charge) does not apply where, or to the extent that, the transaction in question is one any profits from which would be, or would be reflected in, relevant shipping profits of a party to the transaction.

General exclusion of reliefs, deductions and set-offs

- 55 No relief, deduction or set-off of any description is allowed against the amount of a company's tonnage tax profits.

Exclusion of loss relief

- 56 (1) When a company enters tonnage tax, any losses that have accrued to it before entry and are attributable—
- (a) to activities that under tonnage tax become part of the company's tonnage tax trade, or
 - (b) to a source of income that under tonnage tax becomes relevant shipping income,
- are not available for loss relief in any accounting period beginning on or after the company's entry into tonnage tax.
- (2) Any apportionment necessary to determine the losses so attributable shall be made on a just and reasonable basis.
- (3) In sub-paragraph (1) "loss relief" includes any means by which a loss might be used to reduce the amount in respect of which that company, or any other company, is chargeable to tax.

Exclusion of relief or set-off against tax liability

- 57 (1) Any relief or set-off against a company's tax liability for an accounting period does not apply in relation to—
- (a) so much of that tax liability as is attributable to the company's tonnage tax profits, or
 - (b) so much of that tax liability as is attributable to tonnage profits of a controlled foreign company apportioned to the company under section 747(3) of the Taxes Act 1988.
- (2) Relief to which this paragraph applies includes, but is not limited to, any relief or set-off under—
- (a) section 788 or 790 of the Taxes Act 1988 (double taxation relief), or
 - (b) regulations under section 32 of the Finance Act 1998 (unrelieved surplus advance corporation tax).
- (3) Sub-paragraph (1)(b) applies whether or not the company to which the profits are apportioned is subject to tonnage tax.
- (4) For the purposes of sub-paragraph (1)(b)—
- (a) "tonnage profits" means so much of the chargeable profits of the controlled foreign company as, on the assumptions in Schedule 24 to the Taxes Act 1988, are calculated in accordance with paragraph 4 of this Schedule; and

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- (b) so much of a controlled foreign company's chargeable profits for any accounting period as are tonnage profits shall be treated as apportioned under section 747(3) of that Act in the same proportions as those chargeable profits (taken generally) are apportioned.
- (5) For the purposes of any such regulations as are mentioned in sub-paragraph (2) (b), a company's tonnage tax profits shall be left out of account in determining the company's profits charged to corporation tax.

This does not affect the computation under those regulations of shadow ACT on distributions made by a tonnage tax company, whether paid out of tonnage tax profits or other profits.

- (6) This paragraph does not affect—
- (a) any reduction under section 13(2) of the Taxes Act 1988 (marginal small companies' relief), or
 - (b) any set off under section 7(2) or 11(3) of the Taxes Act 1988 (set off for income tax borne by deduction).

Transactions not at arm's length: between tonnage tax company and another person

- 58 (1) In relation to provision made or imposed as between a tonnage tax company and another person by a transaction or series of transactions that—
- (a) falls in relation to the tonnage tax company to be regarded as made or imposed in the course of, or with respect to, its tonnage tax trade, and
 - (b) does not fall in relation to the other person to be regarded as made or imposed in the course of, or with respect to, a tonnage tax trade carried on by that person,

Schedule 28AA to the Taxes Act 1988 (transactions not at arm's length) has effect with the omission of paragraphs 5(2) to (6), 6 and 7 (exclusion of intra-UK transactions).

- (2) Expressions used in Schedule 28AA have the same meaning in this paragraph.
- (3) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

Transactions not at arm's length: between tonnage tax trade and other activities of same company

- 59 (1) Schedule 28AA of the Taxes Act 1988 (transactions not at arm's length) applies to provision made or imposed as between a company's tonnage tax trade and other activities carried on by it as if—
- (a) that trade and those activities were carried on by two different persons,
 - (b) the provision were made or imposed between those persons by means of a transaction, and
 - (c) the two persons were both controlled by the same person at the time of the making or imposition of the provision.

- (2) As applied by sub-paragraph (1), Schedule 28AA has effect with the omission of paragraphs 5(2) to (6), 6 and 7 (exclusion of intra-UK transactions).
- (3) Expressions used in Schedule 28AA have the same meaning in this paragraph.
- (4) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

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Transactions not at arm's length: duty to give notice

- 60 (1) Not more than 90 days after—
- (a) the making of an election under this Schedule, or the occurrence of any other event, as a result of which a company enters, or is taken to have entered, tonnage tax, or
 - (b) the making of an election under this Schedule as a result of which a company will become a tonnage tax company at a later date,
- the company shall give notice under this paragraph to any person whose tax liability may be affected by paragraph 58 (transactions not at arm's length).
- (2) The notice must state—
- (a) that the company has become a tonnage tax company, or
 - (b) that an election has been made under this Schedule as a result of which the company will become a tonnage tax company,
- and inform the person to whom it is given of the possible application of the provisions of Schedule 28AA in relation to transactions between the company and that person.

Treatment of finance costs: single company

- 61 (1) This paragraph applies to a tonnage tax company which is a single company carrying on tonnage tax activities and other activities.
- (2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the company's deductible finance costs outside the ring fence exceed a fair proportion of the company's total finance costs.
- (3) The company's "deductible finance costs outside the ring fence" means the total of the amounts that may be brought into account in respect of finance costs in calculating for the purposes of corporation tax the company's profits other than relevant shipping profits.
- (4) A company's "total finance costs" means so much of the company's finance costs as could, if there were no tonnage tax election, be brought into account in calculating the company's profits for the purposes of corporation tax.
- (5) What proportion of the company's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.
- (6) Where an adjustment falls to be made under this paragraph, an amount equal to the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

Treatment of finance costs: group company

- 62 (1) This paragraph applies to a tonnage tax company which is a member of a tonnage tax group where the activities carried on by the members of the group include activities other than tonnage tax activities.

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- (2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the group's deductible finance costs outside the ring fence exceed a fair proportion of the total finance costs of the group.
- (3) A group's "deductible finance costs outside the ring fence" means so much of the group's finance costs as may be brought into account in calculating for the purposes of corporation tax—
 - (a) in the case of a group member that is a tonnage tax company, the company's profits other than relevant shipping profits, and
 - (b) in the case of a group member that is not a tonnage tax company, the company's profits.
- (4) A group's "total finance costs" means so much of the group's finance costs as could, if there were no tonnage tax election, be brought into account in calculating for the purposes of corporation tax the profits of any member of the group.
- (5) What proportion of the group's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.
- (6) Where an adjustment falls to be made under this paragraph, an amount equal to the relevant proportion of the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

For this purpose "the relevant proportion" is the proportion that the company's tonnage tax profits bear to the tonnage tax profits of all the members of the group.

Meaning of "finance costs"

- 63
- (1) For the purposes of paragraphs 61 and 62 "finance costs" means the costs of debt finance.
 - (2) In calculating the costs of debt finance, the matters to be taken into account include—
 - (a) any costs giving rise to a trading or non-trading debit under Chapter II of Part IV of the Finance Act 1996 (loan relationships);
 - (b) any trading profit or loss, under Chapter II of Part IV of the Finance Act 1994 (interest rate and currency contracts), in relation to debt finance;
 - (c) any exchange gain or loss within the meaning of Chapter II of Part II of the Finance Act 1993 in relation to debt finance;
 - (d) the finance cost—
 - (i) implicit in a payment under a finance lease, or
 - (ii) payable on debt factoring or any similar transaction; and
 - (e) any other costs arising from what would be considered on normal accounting principles to be a financing transaction.
 - (3) No adjustment shall be made under paragraph 61 or 62 if, in calculating for a period the company's, or as the case may be, the group's deductible finance costs outside the ring fence, the amount taken into account in respect of costs and losses is exceeded by the amount taken into account in respect of profits and gains.