

SCHEDULES

SCHEDULE 27

GROUP RELIEF IN CASE OF NON-RESIDENT COMPANIES ETC.

PART I

AMENDMENTS OF CHAPTER IV OF PART X OF THE TAXES ACT 1988

Availability of relief

1 In section 402 of the Taxes Act 1988 (availability of group relief), after subsection (3) insert—

“(3A) Group relief is not available unless the following condition is satisfied in the case of both the surrendering company and the claimant company.

(3B) The condition is that the company is resident in the United Kingdom or is a non-resident company carrying on a trade in the United Kingdom through a branch or agency.”.

2 (1) In section 413 of that Act (interpretation of Chapter IV), in subsection (2), insert the following definitions at the appropriate places—

““company” means any body corporate;”

““non-resident company” means a company that is not resident in the United Kingdom;”.

(2) In subsection (5) of that section, the words from the beginning to “Kingdom; and”, paragraph (c) and the word “or” immediately preceding that paragraph shall cease to have effect.

Limits on amount of relief

3 In section 403A of that Act (limits on group relief), in subsection (10) (qualifying conditions)—

(a) in paragraph (a), after “are both members of the same group” insert “and the condition specified in section 402(3B) is satisfied in the case of both companies”; and

(b) in paragraph (b), after “the conditions specified in section 402(3) for the making of that claim” insert “and the condition specified in section 402(3B)”.

4 After section 403C of that Act insert—

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“403D Relief for or in respect of non-resident companies

- (1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—
 - (a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company’s chargeable profits for that period for corporation tax purposes;
 - (b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and
 - (c) no part of—
 - (i) the loss or other amount, or
 - (ii) any amount brought into account in computing it, corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.
- (2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—
 - (a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and
 - (b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.
- (3) In this section “non-UK profits”, in relation to any person, means amounts which—
 - (a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and
 - (b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period, or amounts taken into account in computing such amounts.
- (4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.
- (5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—
 - (a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or
 - (b) an amount brought into account in computing the amount of any profits falling to be so excluded.

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- (6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.
- (7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.
- (8) In this section "double taxation arrangements" means any arrangements having effect by virtue of section 788.
- (9) In this section "foreign tax" means any tax chargeable under the law of any territory outside the United Kingdom which—
 - (a) is charged on income and corresponds to United Kingdom income tax; or
 - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.
- (10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.

403E Relief for overseas losses of UK resident companies

- (1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by any company resident in the United Kingdom ("the resident company"), a loss or other amount shall be treated as not so available in so far as it—
 - (a) is attributable to an overseas branch or agency of that company, and
 - (b) is a loss or other amount falling within subsection (2) below.
- (2) Subject to subsection (3) below, a loss or other amount attributable to an overseas branch or agency falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that branch or agency is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.
- (3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.
- (4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas branch or agency of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company

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by way of group relief if the amount surrenderable by that company were computed—

- (a) by reference only to that branch or agency, and
 - (b) by the application in relation to that branch or agency of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK branch or agency of a non-resident company.
- (5) In subsection (4)(b) above the reference to the UK branch or agency of a non-resident company is a reference to any branch or agency through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.
- (6) References in this section to an overseas branch or agency of a company are references to any branch or agency through which that company carries on a trade in a territory outside the United Kingdom.
- (7) In this section “foreign tax” and “non-UK profits” have the same meaning as in section 403D.
- (8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.”

Amendments of Schedule 18 to the Taxes Act 1988

- 5 (1) Schedule 18 to that Act (group relief: equity holders and profits or assets available for distribution) is amended as follows.
- (2) In paragraph 1 (meaning of equity holders), in sub-paragraphs (3)(d) and (5)(c), for “in the Official List of the Stock Exchange” substitute “on a recognised stock exchange”.
- (3) In paragraph 2 (meaning of profits available for distribution), after sub-paragraph (1) insert—
- “(1A) The total profits of a non-resident company arising in an accounting period shall be determined for the purposes of sub-paragraph (1)(a) above as if it were resident in the United Kingdom in that accounting period.”
- (4) In paragraph 4 (cases where rights to a distribution or assets are limited), after sub-paragraph (4) insert—
- “(5) In determining in a case in which paragraph 5F below applies whether any rights in respect of dividend or interest or assets on a winding-up are limited as mentioned in sub-paragraph (1) above, the limitations so mentioned shall be treated as not including so much of any limitation as has effect as mentioned in sub-paragraph (2) of that paragraph.”
- (5) After paragraph 5E insert—

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- “5F (1) This paragraph has effect, in the cases specified in sub-paragraphs (2) and (3) below, for the following purposes (“the relevant purposes”)—
- (a) the determination, in a case where the surrendering company or the claimant company is a non-resident company, of whether that company is a 75 per cent. or a 90 per cent. subsidiary of another company;
 - (b) the determination of a member’s share in a consortium in any case where the surrendering company or the claimant company is a non-resident company owned by the consortium.
- (2) The first case in which this paragraph applies is where any of the equity holders—
- (a) to whom the profit distribution is made, or
 - (b) who is entitled to participate in the notional winding-up of that company,
- holds, as such an equity holder of the non-resident company, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which have effect wholly or partly by reference to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company’s UK trade.
- (3) The second case in which this paragraph applies is where—
- (a) option arrangements (within the meaning of paragraph 5B above) exist at any time in the relevant accounting period; and
 - (b) the percentage which, in any of the states of affairs referred to in sub-paragraph (5) of that paragraph, is—
 - (i) the percentage of profits to which any of the equity holders of the non-resident company would be entitled on the profit distribution, or
 - (ii) the percentage of assets to which any of the equity holders of that company would be entitled on the notional winding-up,would differ, at any of the times so referred to, according to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company’s UK trade.
- (4) If the percentage of profits to which, on the profit distribution, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 2(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.
- (5) If the percentage of assets to which, on the notional winding-up, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 3(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.
- (6) If the percentage that falls to be taken for any of the purposes of section 403C or section 413(7) would, under any of paragraphs 4 to 5E

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above, be the lower or lowest of a number of percentages determined on different bases—

- (a) each of the percentages falling to be compared for the purposes of that paragraph shall be determined both—
 - (i) on the basis specified in sub-paragraph (7) below, and
 - (ii) without making the assumption required for a determination on that basis;

and

- (b) the comparison required by that paragraph, so far as made for the relevant purposes, shall be made using, in the case of each of the percentages to be compared, only the lower of the percentages determined under paragraph (a) above.

(7) That basis is the assumption—

- (a) that the profit distribution or the distribution on the notional winding-up is confined to a distribution of profits or assets that are referable to the non-resident company's UK trade; and
- (b) that the amount of the distribution does not exceed whichever is the greater of £100 and the following amount—
 - (i) in the case of a profit distribution, the amount (if any) of so much of the company's chargeable profits for the relevant accounting period as is referable to its UK trade; and
 - (ii) in the case of a distribution on a notional winding-up, its net UK assets;

and

- (c) that none of the ordinary equity holders has an entitlement to a proportion of the profits or assets mentioned in paragraph (a) above that is any greater than the proportion of the distribution to which he would be entitled if—
 - (i) the assumptions specified in paragraphs (a) and (b) above were disregarded; but
 - (ii) it were assumed, where it is less, that the distribution is equal to £100.

(8) In sub-paragraph (7) above—

“net UK assets”, in relation to a non-resident company, means the excess, if any, of the total amount of the assets of the company that are referable to its UK trade (as shown in the relevant balance sheet), over the total amount of those of its liabilities (as so shown) which are so referable and are not liabilities to equity holders as such; and

“ordinary equity holder” means any equity holder whose entitlement on the profit distribution or the distribution on the notional winding-up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to the non-resident company's UK trade.

(9) In sub-paragraph (8) above “relevant balance sheet”, in relation to a company, means any balance sheet relating to its affairs as at the end of the relevant accounting period.

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- (10) For the purposes of this paragraph profits, assets or liabilities of a non-resident company shall be taken to be referable to its UK trade to the extent only that they—
- (a) are attributable to, or used for the purposes of, activities the income and gains from which are, or (were there any) would be, brought into account in computing the company's chargeable profits for any accounting period, and
 - (b) are not attributable to, or used for the purposes of, any activities which (within the meaning of section 403D) are made exempt from corporation tax for any accounting period by any double taxation arrangements.”.
- (6) In paragraph 6 (indirect entitlements), for “5E” substitute “5F”.

Commencement

- 6 (1) Nothing in this Part of this Schedule has effect in relation to any determination whether the qualifying conditions for the purposes of section 403A(9) of the Taxes Act 1988 were met at any time before 1st April 2000.
- (2) Nothing in section 403E of the Taxes Act 1988 (inserted by paragraph 4 above) has effect in relation to the determination of the amount available for surrender—
- (a) for an accounting period ending before 1st April 2000, or
 - (b) for an accounting period beginning before 1st April 2000 and ending on or after that date if or to the extent that the loss or other amount is attributable to the part of the period falling before that date.
- Any apportionment necessary for the purposes of paragraph (b) shall be made on a time basis except where that would work in an unjust or unreasonable manner in relation to any person, in which case it shall be made in such manner as may be just and reasonable.
- (3) Paragraph 5 above has effect in relation to the application of Schedule 18 of the Taxes Act 1988, for any purpose, in relation to times on or after (but not before) 1st April 2000.
- (4) Subject to the above provisions of this paragraph, this Part of this Schedule has effect in relation to accounting periods ending on or after 1st April 2000.