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SCHEDULES

SCHEDULE 9 **U.K.**

Section 45

CHARGEABLE GAINS: SHARE EXCHANGES AND COMPANY RECONSTRUCTIONS

PART 1 **U.K.**

PROVISIONS REPLACING SECTIONS 135 AND 136 OF THE TAXATION OF CHARGEABLE GAINS ACT 1992

Share exchanges

- 1 For section 135 of the Taxation of Chargeable Gains Act 1992 (exchange of securities for those in another company) substitute—

“135 Exchange of securities for those in another company

- (1) This section applies in the following circumstances where a company (“company B”) issues shares or debentures to a person in exchange for shares in or debentures of another company (“company A”).

- (2) The circumstances are:

Case 1

Where company B holds, or in consequence of the exchange will hold, more than 25% of the ordinary share capital of company A.

Case 2

Where company B issues the shares or debentures in exchange for shares as the result of a general offer—

- (a) made to members of company A or any class of them (with or without exceptions for persons connected with company B), and

- (b) made in the first instance on a condition such that if it were satisfied company B would have control of company A.

Case 3

Where company B holds, or in consequence of the exchange will hold, the greater part of the voting power in company A.

- (3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

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- (4) In this section “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and
 - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.
- (6) This section has effect subject to section 137(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme).”.

Scheme of reconstruction involving issue of securities

- 2 For section 136 of the Taxation of Chargeable Gains Act 1992 (c. 12) (reconstruction or amalgamation involving issue of securities) substitute—

“136 Scheme of reconstruction involving issue of securities

- (1) This section applies where—
- (a) an arrangement between a company (“company A”) and—
 - (i) the persons holding shares in or debentures of the company, or
 - (ii) where there are different classes of shares in or debentures of the company, the persons holding any class of those shares or debentures,
 is entered into for the purposes of, or in connection with, a scheme of reconstruction, and
 - (b) under the arrangement—
 - (i) another company (“company B”) issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in company A, and
 - (ii) the shares in or debentures of company A comprised in relevant holdings are retained by those persons or are cancelled or otherwise extinguished.
- (2) Where this section applies—
- (a) those persons are treated as exchanging their relevant holdings in company A for the shares or debentures held by them in consequence of the arrangement, and
 - (b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

For this purpose shares in or debentures of company A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.

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- (3) Where a reorganisation of the share capital of company A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.
- (4) In this section—
 - (a) “scheme of reconstruction” has the meaning given by Schedule 5AA to this Act;
 - (b) references to “relevant holdings” of shares in or debentures of company A are—
 - (i) where there is only one class of shares in or debentures of the company, to holdings of shares in or debentures of the company, and
 - (ii) where there are different classes of shares in or debentures of the company, to holdings of a class of shares or debentures that is involved in the scheme of reconstruction (within the meaning of paragraph 2 of Schedule 5AA);
 - (c) references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise; and
 - (d) any reference to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.
- (5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.
- (6) This section has effect subject to section 137(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).”.

Meaning of “scheme of reconstruction”

3 After Schedule 5A to the Taxation of Chargeable Gains Act 1992 insert—

“SCHEDULE 5AA U.K.

MEANING OF “SCHEME OF RECONSTRUCTION”

Introductory

1 In section 136 “scheme of reconstruction” means a scheme of merger, division or other restructuring that meets the first and second, and either the third or the fourth, of the following conditions.

First condition: issue of ordinary share capital

2 The first condition is that the scheme involves the issue of ordinary share capital of a company (“the successor company”) or of more than one company (“the successor companies”)—

- (a) to holders of ordinary share capital of another company (“the original company”) or, where there are different classes of ordinary

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share capital of that company, to holders of one or more classes of ordinary share capital of that company (the classes “involved in the scheme of reconstruction”), or

- (b) to holders of ordinary share capital of more than one other company (“the original companies”) or, where there are different classes of ordinary share capital of one or more of the original company or companies, to holders of ordinary share capital of any of those companies or of one or more classes of ordinary share capital of any of those companies (the classes “involved in the scheme of reconstruction”),

and does not involve the issue of ordinary share capital of the successor company, or (as the case may be) any of the successor companies, to anyone else.

Second condition: equal entitlement to new shares

- 3 (1) The second condition is that under the scheme the entitlement of any person to acquire ordinary share capital of the successor company or companies by virtue of holding relevant shares, or relevant shares of any class, is the same as that of any other person holding such shares or shares of that class.
- (2) For this purpose “relevant shares” means shares comprised—
 - (a) where there is one original company, in the ordinary share capital of that company or, as the case may be, in the ordinary share capital of that company of a class involved in the scheme of reconstruction;
 - (b) where there is more than one original company, in the ordinary share capital of any of those companies or, as the case may be, in the ordinary share capital of any of those companies of a class involved in the scheme of reconstruction.

Third condition: continuity of business

- 4 (1) The third condition is that the effect of the restructuring is—
 - (a) where there is one original company, that the business or substantially the whole of the business carried on by the company is carried on—
 - (i) by a successor company which is not the original company, or
 - (ii) by two or more successor companies (which may include the original company);
 - (b) where there is more than one original company, that all or part of the business or businesses carried on by one or more of the original companies is carried on by a different company, and the whole or substantially the whole of the businesses carried on by the original companies are carried on—
 - (i) where there is one successor company, by that company (which may be one of the original companies), or
 - (ii) where there are two or more successor companies, by those companies (which may be the same as the original companies or include any of those companies).

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- (2) The reference in sub-paragraph (1)(a)(ii) or (b)(ii) to the whole or substantially the whole of a business, or businesses, being carried on by two or more companies includes the case where the activities of those companies taken together embrace the whole or substantially the whole of the business, or businesses, in question.
- (3) For the purposes of this paragraph a business carried on by a company that is under the control of another company is treated as carried on by the controlling company as well as by the controlled company.

Section 840 of the Taxes Act (meaning of “control”) applies for the purposes of this sub-paragraph.

- (4) For the purposes of this paragraph the holding and management of assets that are retained by the original company, or any of the original companies, for the purpose of making a capital distribution in respect of shares in the company shall be disregarded.

In this sub-paragraph “capital distribution” has the same meaning as in section 122.

Fourth condition: compromise or arrangement with members

- 5 The fourth condition is that—
- (a) the scheme is carried out in pursuance of a compromise or arrangement—
 - (i) under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, or
 - (ii) under any corresponding provision of the law of a country or territory outside the United Kingdom, and
 - (b) no part of the business of the original company, or of any of the original companies, is transferred under the scheme to any other person.

Preliminary reorganisation of share capital to be disregarded

- 6 Where a reorganisation of the share capital of the original company, or of any of the original companies, is carried out for the purposes of the scheme of reconstruction, the provisions of the first and second conditions apply in relation to the position after the reorganisation.

Subsequent issue of shares or debentures to be disregarded

- 7 An issue of shares in or debentures of the successor company, or any of the successor companies, after the latest date on which any ordinary share capital of the successor company, or any of them, is issued—
- (a) in consideration of the transfer of any business, or part of a business, under the scheme, or
 - (b) in pursuance of the compromise or arrangement mentioned in paragraph 5(a),
- shall be disregarded for the purposes of the first and second conditions.

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Interpretation

- 8 (1) In this Schedule “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and
 - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (2) Any reference in this Schedule to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.”.

PART 2 U.K.

CONSEQUENTIAL AMENDMENTS

Taxes Act 1988

- 4 (1) The Taxes Act 1988 is amended as follows.
- (2) In section 299 (disposal of shares)—
- (a) in subsection (6D), as that section applies to shares issued after 31st December 1993 (enterprise investment scheme), and
 - (b) in subsection (4C), as that section applies to shares issued before 1st January 1994 (business expansion scheme),
- for “(whether or not by virtue of section 135(3) of that Act)” substitute “ (including a case where that section applies by virtue of any enactment relating to chargeable gains) ”, and for the words from “shall be construed” to the end substitute “ have the same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned) ”.
- (3) In section 312(3) (interpretation of Chapter 3 of Part 7: references to disposal of shares), for “136(1)” substitute “ 136 ”.
- (4) In section 473(6) (conversion etc of securities held as circulating capital), for “136(3)” substitute “ 135(5), 136(5) ”.
- (5) In section 757 (disposal of material interests in non-qualifying offshore funds), for subsections (5) and (6) substitute—
- “(5) Section 135 of the 1992 Act (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Chapter if the company that is company A for the purposes of that section is or was at a material time a non-qualifying offshore fund and the company that is company B for those purposes is not such a fund.

In a case where that section would apply apart from this subsection, the exchange in question (of shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund) shall for the purposes of this Chapter constitute a disposal of interests in the

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offshore fund for a consideration equal to their market value at the time of the exchange.

- (6) Section 136 of the 1992 Act (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Chapter so as to require persons to be treated as exchanging shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund for assets that do not constitute interests in such a fund.

In a case where that section would apply apart from this subsection, the deemed exchange in question (of shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund) shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the deemed exchange.”.

- (6) In section 758(6) (offshore funds operating equalisation arrangements: events treated as disposal), for the words from “section 135” to the end substitute “ any provision of Chapter 2 of Part 4 of that Act ”.
- (7) In section 842 (investment trusts), at the end of subsection (4) add “and “scheme of reconstruction” has the same meaning as in section 136 of that Act”.

Taxation of Chargeable Gains Act 1992

- 5 (1) The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In section 31 (distributions within a group followed by a disposal of shares), for subsection (6)(b) substitute—
- “(b) an exchange, or deemed exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, that is treated by virtue of section 135 or 136 as a reorganisation of share capital within the meaning of section 126 to which sections 127 to 131 apply with the necessary adaptations, or”.
- (3) In section 34 (transactions treated as a reorganisation of capital)—
- (a) in subsections (1)(a), (1A), (1B) and (1C)(a) for “sections 127 and 135(3)” substitute “ section 135 or 136 ”;
- (b) in the closing words of subsection (1) for “section 135(3)” substitute “ section 135 or 136 ”; and
- (c) in subsection (2) for the words from the beginning to “and in those subsections” substitute “ In subsections (1) to (1C) ” (the words omitted being unnecessary).
- (4) In section 102 (collective investment schemes with property divided into separate parts), in subsection (3)(b) after “135” insert “ or 136 ”.
- (5) In section 137 (restriction on application of sections 135 and 136)—
- (a) in subsection (1), for “, reconstruction or amalgamation” substitute “ or scheme of reconstruction ”; and
- (b) in subsection (6), for “section 136(3)” substitute “ section 135(5), 136(5) ”.

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- (6) In section 138(1) (procedure for clearance in advance), for “, reconstruction or amalgamation” substitute “ or scheme of reconstruction ”.
- (7) In section 139 (reconstruction involving transfer of business), for subsection (9) substitute—
- “(9) In this section “scheme of reconstruction” has the same meaning as in section 136.”.
- (8) In section 147 (quoted options treated as part of new holdings)—
- (a) in subsection (1) for “or amalgamation” substitute “, exchange or scheme of reconstruction ”; and
- (b) in subsection (2) at the end insert “ and “scheme of reconstruction” has the same meaning as in section 136 ”.
- (9) In section 151B (venture capital trusts: supplementary), in subsection (8) for paragraph (c) substitute—
- “(c) a reference to the exchanged holding is, in relation to section 135 or 136, to the shares in the company referred to in that section as company A.”.
- (10) In section 171(3) (transfers within a group) for “by virtue of sections 127 and 135” substitute “ by section 127 as it applies by virtue of section 135 ”.
- (11) In section 211(2)(a) (transfer of long-term business of insurance company), after “scheme of reconstruction” insert “ within the meaning of that section ”.
- (12) In section 251 (debts: general provisions)—
- (a) in subsection (2) for “132 and 135” substitute “ 132, 135 and 136 ”;
- (b) in subsection (3)—
- (i) for “132 and 135” substitute “ 132, 135 and 136 ”, and
- (ii) for “either section 132 or 135” substitute “ section 132, 135 or 136 ”;
- (c) in subsection (6)(b) for the words from “unaffected” to the end substitute “ to which section 135 applies and which is unaffected by section 137(1) ”.
- (13) In Schedule A1 (taper relief), in paragraph 18(1)(b) (special rules for assets acquired in the reconstruction of mutual businesses etc) for “subsection (3)” substitute “ subsection (2)(a) ”.
- (14) In Schedule 6 (retirement relief: supplementary provisions), in paragraph 2(2) for “section 135(3)” substitute “ section 135 or 136 ”.

Finance Act 2000

- 6 (1) Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme) is amended as follows.
- (2) In paragraph 71 (tax avoidance), in sub-paragraph (1)(b)(ii) for “reconstructions and amalgamations” substitute “ schemes of reconstruction ”.
- (3) In paragraph 82(1) (company reconstructions and amalgamations), in the closing words for “company reconstructions and amalgamations” substitute “ share exchanges and company reconstructions ”.

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- (4) In paragraph 93(7) (identification of shares on a disposal: cases to which section 127 applies)—
- (a) for “(whether or not by virtue of section 135(3) of that Act)” substitute “ (including a case where that section applies by virtue of any enactment relating to chargeable gains) ”; and
 - (b) for the words from “shall be construed” to the end substitute “ have the same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned) ”.
- (5) In paragraph 96 (meaning of “disposal”)—
- (a) in sub-paragraph (2)(a) for “section 136(1)” substitute “ section 136 ”;
 - (b) in sub-paragraph (2)(b) for “sections 135 and 136 of that Act to bona fide reconstructions and amalgamations” substitute “ section 136 of that Act to bona fide schemes of reconstruction ”.

PART 3 U.K.

COMMENCEMENT

General commencement date

- 7 (1) Subject to paragraph 8, the provisions of this Schedule have effect in relation to shares or debentures issued on or after 17th April 2002 (“the commencement date”).
- (2) The reference in sub-paragraph (1) to shares or debentures includes any interests falling to be treated as shares or debentures for the purposes of section 135 or 136 of the Taxation of Chargeable Gains Act 1992 (c. 12) as substituted by this Schedule.

Commencement provision for certain consequential amendments

- 8 (1) Paragraph 4(2), (3) and (5) and paragraph 6(2), (4) and (5) have effect in relation to disposals on or after the commencement date.
- (2) Paragraph 4(4) has effect in relation to transactions to which section 473 of the Taxes Act 1988 applies occurring on or after the commencement date.
- (3) Paragraph 4(6) has effect in relation to events occurring on or after the commencement date.
- (4) Paragraph 4(7) has effect in relation to shares and securities (within the meaning of section 842 of the Taxes Act 1988) issued on or after the commencement date.

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