

*Status: Point in time view as at 21/07/2009.*

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## SCHEDULES

### SCHEDULE 25

#### TRANSFERS OF INCOME STREAMS

#### PART 2

#### NON-CORPORATE TRANSFERORS

7 In ITA 2007, after section 809 insert—

#### “CHAPTER 5A

#### TRANSFERS OF INCOME STREAMS

#### **809AZA Application of Chapter**

- (1) This Chapter applies where—
  - (a) a person within the charge to income tax (“the transferor”) makes a transfer to another person (“the transferee”) of a right to relevant receipts (see subsection (2)), and
  - (b) (subject to subsection (3)) the transfer of the right is not a consequence of the transfer to the transferee of an asset from which the right to relevant receipts arises.
- (2) “Relevant receipts” means any income—
  - (a) which (but for the transfer) would be charged to income tax as income of the transferor, or
  - (b) which (but for the transfer) would be brought into account in calculating profits of the transferor for the purposes of income tax.
- (3) Despite paragraph (b) of subsection (1), this Chapter applies if the transfer of the right is a consequence of the transfer to the transferee of all rights under an agreement for annual payments; and for the purposes of that paragraph the transfer of an asset under a sale and repurchase agreement is not to be regarded as a transfer of the asset.
- (4) Section 809AZB makes provision as to the consequences of this Chapter applying.
- (5) For exclusions from this Chapter, see—
  - (a) section 809AZC (amount otherwise taxed),
  - (b) section 809AZD (certain annuities), and
  - (c) section 809AZE (transfer by way of security).

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- (6) Section 809AZF makes special provision about transfers of partnership shares.
- (7) Section 809AZG contains supplementary provisions.

### **809AZB Value of transferred income stream treated as income**

- (1) The relevant amount (see subsection (2)) is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—
  - (a) would have been chargeable to income tax, or
  - (b) would have been brought into account in calculating any profits for the purposes of income tax,
 but for the transfer of the right to relevant receipts.
- (2) The relevant amount is—
  - (a) (except where paragraph (b) applies) the amount of the consideration for the transfer of the right, or
  - (b) where the amount of any such consideration is substantially less than the market value of the right at the time when the transfer takes place (or where there is no consideration for the transfer of the right), the market value of the right at that time.
- (3) The income under subsection (1) is to be treated as arising in the chargeable period of the transferor in which the transfer takes place.
- (4) But subsection (5) applies if (apart from the transfer) any of the relevant receipts—
  - (a) would have been brought into account in accordance with Part 2 or 3 of ITTOIA 2005 (trading income and property income) in calculating any profits for the purposes of income tax, and
  - (b) in accordance with generally accepted accounting practice, would have been recognised otherwise than wholly in the chargeable period in which the transfer takes place.
- (5) If this subsection applies, the income under subsection (1) is to be treated as arising—
  - (a) to the extent that it does not exceed the amount of the consideration for the transfer of the right, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer is recognised for accounting purposes in a profit and loss account or income statement of the transferor, and
  - (b) otherwise, in the chargeable period or periods for which, in accordance with generally accepted accounting practice, the consideration for the transfer would be so recognised if it were of an amount equal to the market value of the right at the time when the transfer takes place.
- (6) But if in a case where the transferor is a company it at any time becomes reasonable to assume that the income (to any extent) is not, or would not be, treated by subsection (5) as arising in an accounting period of the transferor,

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the income is to that extent to be treated as arising immediately before that time.

#### **809AZC Exception: amount otherwise taxed**

This Chapter does not apply if and to the extent that the income under section 809AZB(1) is (apart from this Chapter)—

- (a) charged to tax as income of the transferor,
- (b) brought into account in calculating the profits of the transferor, or
- (c) brought into account under CAA 2001.

#### **809AZD Exception: certain annuities**

This Chapter does not apply to a transfer of a right to—

- (a) annual payments under a life annuity as defined in section 473(2) of ITTOIA 2005, or
- (b) annual payments under an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).

#### **809AZE Exception: transfer by way of security**

This Chapter does not apply if the consideration for the transfer is the advance under an arrangement that is a structured finance arrangement for the purposes of section 774A or 774C of ICTA in relation to the transferor or a partnership in which the transferor is a partner.

#### **809AZF Partnership shares**

- (1) For the purposes of this Chapter a transfer of a right to relevant receipts consisting of the reduction in a transferor's share in the profits or losses of a partnership is to be regarded as a consequence of a transfer of an asset from which the right arose (that is, the partnership property) if condition A or B is met.
- (2) Condition A is that there is a reduction of the transferor's share in the partnership property and the reduction in the transferor's share in the profits or losses is proportionate to that reduction.
- (3) Condition B is that it is not the main purpose, or one of the main purposes, of the transfer to secure that the relevant receipts are not charged to income tax or corporation tax as income of any partner or brought into account as income of any partner for the purpose of either of those taxes.

#### **809AZG Interpretation**

- (1) For the purposes of this Chapter—
  - (a) the grant or surrender of a lease of land is to be regarded as a transfer of the land, and
  - (b) the disposal of an interest in an oil licence (within the meaning of section 809 of CTA 2009) is to be regarded as a transfer of the oil licence.

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- (2) The Treasury may by order make other provision for securing that other transactions are to be regarded as transfers of assets for those purposes.
- (3) In this Chapter—
  - (a) references to a transfer include sale, exchange, gift and assignment (or assignation) and any other arrangement which equates in substance to a transfer, and
  - (b) references to a transfer taking place are, in the case of an arrangement other than a sale, exchange, gift or assignment (or assignation), to the making of the arrangement.
- (4) A transfer to or by any partnership of which the transferor or transferee is a member, and a transfer to the trustees of any trust of which the transferor is a beneficiary, counts as a transfer in relation to which this Chapter applies.”

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