

*Status: Point in time view as at 19/07/2011.*

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## SCHEDULES

### SCHEDULE 5

#### GROUP MISMATCH SCHEMES

*Insertion of new Part 21B of CTA 2010 and consequential amendments*

2 After Part 21A of that Act insert—

#### “PART 21B

#### GROUP MISMATCH SCHEMES

##### **Losses and profits from group mismatch schemes to be disregarded**

938A) This section applies to a company that—

- (a) is (at any time) a party to a group mismatch scheme, and
  - (b) is a member of the scheme group.
- (2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).
- (3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter—
- (a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes) as if it were so brought into account, and
  - (b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

##### **Meaning of “a group mismatch scheme” and “the scheme group”**

938B) A scheme is “a group mismatch scheme” if—

- (a) the parties to the scheme are, or include, members of the same group, and
  - (b) condition A or B is met.
- (2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.
- (3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).

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- (4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.
- (5) Condition B is that—
  - (a) the purpose, or one of the main purposes, of any member of the scheme group in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and
  - (b) at the time the scheme is entered into—
    - (i) there is no chance that the scheme will secure a relevant tax disadvantage, or
    - (ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.
- (6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.
- (7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.
- (8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.
- (9) In determining whether condition A or B is met, section 938A (scheme profits and losses to be left out of account) is to be disregarded.
- (10) In this Part “the scheme group” means the group mentioned in subsection (1) (a).

### **Meaning of “scheme loss” and “scheme profit”**

- 938(1) A loss or profit made by a company in an accounting period is a “scheme loss” or “scheme profit” in relation to a group mismatch scheme if the loss or profit—
- (a) arises from a transaction, or series of transactions, that forms part of the scheme,
  - (b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and
  - (c) meets the first or second asymmetry condition.
- (2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.
  - (3) Where, at the end of the accounting period—
    - (a) it is not certain whether the scheme will secure a relevant tax advantage, or
    - (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,

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a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.

- (4) Where—
- (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
  - (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,
- only that part of the loss or profit is a “scheme loss” or “scheme profit”.
- (5) The second asymmetry condition is that the loss or profit—
- (a) does not meet the first asymmetry condition, but
  - (b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.
- (6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.
- (7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938A (scheme profits and losses to be left out of account) is to be disregarded.

#### **Meaning of “relevant tax advantage” etc and “the scheme period”**

- 938D(1) In this Part “relevant tax advantage”, in relation to a scheme, means an economic profit that—
- (a) is made by the scheme group over the scheme period,
  - (b) meets the condition in subsection (3), and
  - (c) is not negligible.
- (2) In this Part “relevant tax disadvantage”, in relation to a scheme, means an economic loss that—
- (a) is made by the scheme group over the scheme period,
  - (b) meets the condition in subsection (3), and
  - (c) is not negligible.
- (3) The condition is that the economic profit or loss arises as a result of asymmetries in the way different members of the scheme group bring, or do not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.
- (4) A reference in this section to asymmetries includes, in particular—
- (a) asymmetries relating to quantification, and
  - (b) asymmetries relating to timing.
- (5) In this section—
- (a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and
  - (b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.

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- (6) In this Part “the scheme period”, in relation to a scheme, means the period during which the scheme has effect.

### **Meaning of “group”**

938E) For the purposes of this Part a company (“company A”) is a member of a group, in relation to a scheme, if any other company is at any time in the scheme period associated with company A.

- (2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.
- (3) For the purposes of this section a company (“company B”) is associated with company A at a time (“the relevant time”) if any of the following five conditions is met.
- (4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.
- (5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.
- (6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
- (7) The fourth condition is that—
  - (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
  - (b) at the relevant time the third company has a major interest in company B.
- (8) The fifth condition is that—
  - (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
  - (b) at the relevant time the third company has a major interest in company B.
- (9) In this section, the financial results of any two companies for any period meet “the consolidation condition” if—
  - (a) they are required to be comprised in group accounts,
  - (b) they would be required to be comprised in such accounts but for the application of an exemption, or
  - (c) they are in fact comprised in such accounts.
- (10) In subsection (9), “group accounts” means accounts prepared under—
  - (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (11) The following provisions apply for the purposes of this section—
 

sections 466 to 471 of CTA 2009 (companies connected for accounting period), and

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sections 473 and 474 of CTA 2009 (meaning of “major interest”).

### **Meaning of references to economic profits and losses**

- 938(F) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular—
- (a) profits and losses made as a result of the operation of the Corporation Tax Acts, and
  - (b) any adjustments required to reflect the time value of money.
- (2) A reference in this Part to an economic profit or loss made by the scheme group over the scheme period is to an economic profit or loss made in that period by the members of the group considered together.
- (3) In determining for the purposes of this Part the amount of an economic profit or loss made by the scheme group over the scheme period, profits and losses made by a member of the group are to be taken into account only to the extent that they are attributable to times at which the member is a party to the scheme.

### **Tax capacity assumption**

- 938(G) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.
- (2) The economic profits and losses made by the scheme group over the scheme period must be calculated on the assumption that each company that is at any time a party to the scheme—
- (a) obtains the full tax benefit of any loss made by that company in relation to a loan relationship or a derivative contract during the period, and
  - (b) incurs the full tax cost of any profit made by that company in relation to a loan relationship or a derivative contract during the period.
- (3) The “full tax benefit” of a loss is the reduction in the liability of the company to corporation tax that would result if—
- (a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and
  - (b) the company's profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.
- (4) The “full tax cost” of a profit is the increase in the liability of the company to corporation tax that would result if—
- (a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and
  - (b) the company's profits chargeable to corporation tax, disregarding the profit, were nil.

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### **Meaning of “scheme”**

938H In this Part “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

### **Schemes involving repos or quasi-repos**

938I) This section applies where—

- (a) a scheme includes an arrangement under which a member of the scheme group has a debtor repo or a debtor quasi-repo, and
  - (b) the advance under that arrangement is received, directly or indirectly, from a member of the scheme group.
- (2) References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 of CTA 2009 include amounts brought into account, or not brought into account, for the purposes of any other provision so far as it applies the charge to corporation tax on income to the repayment of the advance.
  - (3) Sections 548 and 549 of CTA 2009 (meaning of debtor repo and debtor quasi-repo) apply for the purposes of this section.
  - (4) For the purposes of subsection (2) “the repayment of the advance” means the consideration given on the purchase of securities mentioned in condition D in section 548 or 549 of CTA 2009.

### **Schemes involving finance arrangements**

938J) This section applies in relation to a scheme if—

- (a) it includes a type 1, 2 or 3 finance arrangement under which a member of the scheme group is the borrower, and
  - (b) the advance under that arrangement is received, directly or indirectly, from a member of the scheme group.
- (2) References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 of CTA 2009 include amounts brought into account, or not brought into account, for the purposes of any other provision so far as it applies the charge to corporation tax on income to the repayment of the advance.
  - (3) Sections 758, 763 and 767 of this Act (meaning of type 1, 2 and 3 finance arrangements) apply for the purposes of this section.
  - (4) For the purposes of subsection (2) “the repayment of the advance” means the payments mentioned in condition A in section 758, 763 or 767 of this Act.

### **Trading income**

938K References in this Part to amounts brought into account, or not brought into account, as debits or credits for the purposes of Part 5 or 7 of CTA 2009 include amounts brought into account, or not brought into account, as

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expenses or receipts of a trade by virtue of section 297 or 573 of that Act (trading credits and debits to be brought into account under Part 3).

### **Foreign companies and foreign permanent establishments**

938L(1) References in this Part to a company not bringing amounts into account as debits or credits for the purposes of Part 5 or 7 of CTA 2009 do not include the company not bringing amounts into account by virtue of—

- (a) the company being non-UK resident, or
- (b) an election under section 18A of CTA 2009 (profits or losses of foreign permanent establishments).

(2) See section 938M for provision about controlled foreign companies.

### **Controlled foreign companies**

938M(1) Paragraph 5(1) of Schedule 24 to ICTA (assumption that a controlled foreign company is not a member of any group for the purposes of any provision of the Tax Acts) does not apply for the purposes of this Part.

(2) References in this Part to a company bringing amounts into account, or not bringing them into account, as debits or credits for the purposes of Part 5 or 7 of CTA 2009 include bringing amounts into account, or not bringing them into account, as debits or credits under that Part in determining the chargeable profits of the company (or in determining that there were no such profits) for the purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies).

### **Priority**

938N For the purposes of this Part the following provisions are to be treated as of no effect—

- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
- (b) section 690 of that Act (derivative contracts for unallowable purposes);
- (c) Part 4 of TIOPA 2010 (transfer pricing);
- (d) Part 6 of that Act (tax arbitrage);
- (e) Part 7 of that Act (tax treatment of financing costs and income)."

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