

SCHEDULES

SCHEDULE 3

BANKING COMPANIES: SURCHARGE

PART 2

CONSEQUENTIAL AMENDMENTS

TIOPA 2010

9 After section 371BH insert—

“371BI Banking companies

- (1) In relation to a chargeable company that is a banking company for the relevant corporation tax accounting period, step 5 in section 371BC(1) is to be taken in accordance with subsections (2) to (5).
- (2) The amount given by paragraph (a) at step 5 is to be increased by an amount equal to—

$$(PCP - SASA) \times SP$$

where—

“PCP” is P% of the CFC’s chargeable profits;

“SASA” is so much (if any) of the chargeable company’s available surcharge allowance as the company specifies for the purposes of this subsection in its company tax return for the relevant corporation tax accounting period;

“SP” is the percentage specified in section 269DA(1) of CTA 2010 (surcharge on banking companies).

- (3) Subsection (5) applies in relation to the chargeable company if—
 - (a) there are arrangements that result in a relevant transfer, and
 - (b) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on the chargeable company at step 5 in section 371BC(1) in consequence of subsection (2).
- (4) There is a “relevant transfer” if there is, in substance—
 - (a) a transfer (directly or indirectly) of all or a significant part of the chargeable profits of the CFC, for the CFC’s accounting period, to a non-banking company, or
 - (b) a transfer (directly or indirectly) of a loss or deductible amount to the CFC, for the CFC’s accounting period, from a non-banking

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company, resulting in the elimination or significant reduction of the CFC's chargeable profits for that period.

- (5) For the purposes of subsection (2), the CFC's chargeable profits are to be taken to be what they would have been had the relevant transfer not taken place.
- (6) Subsections (7) to (9) apply in relation to an accounting period of a CFC ("the relevant CFC accounting period") where—
- (a) a company ("C")—
 - (i) has an accounting period for corporation tax purposes during which the relevant CFC accounting period ends, and
 - (ii) is a banking company for that accounting period,
 - (b) there are arrangements that—
 - (i) do not result in a relevant transfer, but
 - (ii) disregarding subsections (7) to (9), would result in some or all of the CFC's chargeable profits for the relevant CFC accounting period being apportioned to one or more non-banking companies at step 3 in section 371BC(1) instead of being apportioned to C, and
 - (c) the main purpose, or one of the main purposes, of the arrangements is to avoid, or reduce, a sum being charged on C at step 5 in section 371BC(1) in consequence of subsection (2) (whether in relation to the relevant CFC accounting period or any other accounting period of the CFC).
- (7) If the arrangements would otherwise result in C not having a relevant interest in the CFC, C is to be treated as having the relevant interest in the CFC.
- (8) The CFC's chargeable profits and creditable tax for the relevant CFC accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
- (9) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the result of the arrangements mentioned in subsection (6)(b)(ii).
- (10) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “available surcharge allowance” means available surcharge allowance under section 269DE or (as the case may be) 269DJ of CTA 2010;
- “banking company” has the same meaning as in Chapter 4 of Part 7A of CTA 2010 (see section 269DO of that Act);
- “deductible amount” means—
- (a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),

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- (b) an expense of a UK property business or overseas property business,
 - (c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,
 - (d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and relationships treated as such) (see section 301(2) of that Act), or
 - (e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act);
- “company tax return” has the same meaning as in Schedule 18 to FA 1998;
- “non-banking company” means a company that, at any time when the arrangements mentioned in subsection (3) or (as the case may be) (6) have effect, is neither—
- (a) a banking company, nor
 - (b) a CFC in relation to which a banking company is a chargeable company.
- (11) Sections 269DE(6) and 269DJ(5) of CTA 2010 contain restrictions on the amount of available surcharge allowance that can be specified and section 269DK of that Act makes provision about what happens if those restrictions are exceeded.”