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**Changes to legislation:** There are currently no known outstanding effects for the Taxation (Post-transition Period) Act 2020, SCHEDULE 4. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 4

Section 9

#### RECOVERY OF UNLAWFUL STATE AID

TIOPA 2010 has effect as if—

- (a) after Chapter 21 of Part 9A there were inserted—

#### “CHAPTER 21A

#### RECOVERY OF UNLAWFUL STATE AID

##### **Recovery of unlawful state aid**

371UFA Schedule 7ZA makes provision in connection with Commission [Decision \(EU\) 2019/1352](#) of 2 April 2019 on the state aid SA.44896 implemented by the United Kingdom concerning the CFC Group Financing Exemption (referred to in that Schedule as “the Commission Decision”).”, and

- (b) after Schedule 7 there were inserted—

#### “SCHEDULE 7ZA

Section 371UFA

#### RECOVERY OF UNLAWFUL STATE AID

##### *Recovery of unlawful state aid*

- 1 (1) Any amount that would have been chargeable on a company as if it were corporation tax for a relevant accounting period of the company by virtue of this Part, if the company had not benefited from the unlawful state aid identified in the Commission Decision, is to be treated as chargeable on that company as if it were corporation tax for that relevant accounting period by virtue of this Part.
- (2) In this Schedule, such an amount is referred to as an “additional amount”.

##### *Charging notice*

- 2 (1) This paragraph applies where an officer of HMRC has reason to believe that an additional amount is chargeable on a company in respect of one or more of the company's relevant accounting periods.
- (2) The officer may—
- (a) make an assessment of the additional amounts which ought in their opinion to be charged on the company for each relevant accounting period, and
- (b) give a notice (a “charging notice”) to that company requiring it to pay those amounts.

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- (3) More than one charging notice may be given to a company in respect of a relevant accounting period.
- (4) A charging notice must—
  - (a) state the relevant accounting periods to which the notice applies,
  - (b) state the additional amounts required to be paid by the notice for each of those relevant accounting periods,
  - (c) set out the basis on which the officer has calculated the additional amounts,
  - (d) state the period within which payment must be made, and
  - (e) explain how interest is to be calculated in accordance with paragraph 8.
- (5) Where a charging notice is given to a company, the company must pay the additional amounts specified in the notice within the period of 30 days beginning with the day on which the notice is given to the company.
- (6) The payment of the amounts specified in the notice may not be postponed on any grounds, and so the amounts charged by the charging notice remain due and payable despite any appeal in respect of the notice.

#### *Charging period*

- 3 (1) No charging notice may be given after the end of the charging period.
- (2) The charging period is the period of 12 months beginning with the day on which Schedule 4 to the Taxation (Post-transition Period) Act 2020 comes into force.
- (3) The Treasury may by regulations amend sub-paragraph (2) so as to extend the charging period if they consider it necessary to do so in order to give effect to the Commission Decision.
- (4) The power in sub-paragraph (3) may be exercised more than once.

#### *Consequential claims etc*

- 4 (1) An officer of HMRC may by notice (a “consequential amendment notice”) given to a company make any adjustment or amendment, in relation to the company, to any company tax return, self-assessment, discovery assessment, claim, election, application or notice (including a charging notice) relating to any accounting period which the officer considers is appropriate in consequence of—
  - (a) a charging notice,
  - (b) any claim, election, application, notice or other representation relating to a charging notice, or
  - (c) anything done by the Tribunal under paragraph 6(4) (powers of the Tribunal on an appeal).
- (2) More than one consequential amendment notice may be given to a company in respect of an accounting period.
- (3) Adjustments or amendments made in reliance on sub-paragraph (1) may (among other things) relate to—
  - (a) an additional amount charged on a company in a charging notice,

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- (b) any other part of the CFC charge charged on the company (if any),
  - (c) any other tax payable by the company, or
  - (d) any claim, election, application or notice relating to a matter within paragraph (a), (b) or (c).
- (4) In sub-paragraphs (1)(b) and (3)(d), the references to “any claim” include any claim for relief which a company may make in respect of an additional amount.
- (5) Where a consequential amendment notice reduces the amount which is chargeable on a company as the additional amount for a relevant accounting period—
  - (a) an officer of HMRC must exercise the power in sub-paragraph (1) so as to secure, so far as reasonably practicable, that relevant reliefs are treated in the same way as they were treated before any steps were taken under this Schedule in relation to them, and
  - (b) any amount which was overpaid must be repaid.
- (6) In sub-paragraph (5), “relevant reliefs” means so much of any reliefs previously taken into account in calculating the additional amount chargeable on the company for the relevant accounting period in question as are referable to the amount by which that additional amount is reduced.
- (7) Subject to sub-paragraph (8), paragraphs 61 to 64 of Schedule 18 to FA 1998 apply in relation to the following as they apply in relation to a discovery assessment—
  - (a) a charging notice, and
  - (b) a consequential amendment notice.
- (8) Paragraph 62(1)(a) of that Schedule is to be read as if the reference to one year from the end of the relevant accounting period were a reference to the period of 60 days beginning with the day on which the charging notice or consequential amendment notice is given.

*Interaction with enquiries etc*

- 5 (1) This Schedule applies in respect of an additional amount whether or not any functions in or under Schedule 18 to FA 1998 (company tax returns, assessments etc) have been exercised, or any other steps have been taken, in relation to that amount.
- (2) Where a company is required to pay an additional amount for a relevant accounting period in accordance with a charging notice—
  - (a) any discovery assessment ceases to have effect so far as it relates to that additional amount, and
  - (b) any claim, election, application or notice ceases to have effect so far as it relates to that discovery assessment.
- (3) Nothing in sub-paragraph (2)(b) prevents a company making or giving a new claim, election, application or notice, including in relation to any matter referred to in the discovery assessment mentioned in that sub-paragraph.
- (4) When giving a partial or final closure notice to a company in relation to an enquiry into the company's tax return relating to a relevant accounting period, an officer of HMRC must take into account—

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- (a) any charging notice given to the company,
- (b) any claim, election, application or notice relating to such a charging notice, and
- (c) any consequential amendment notice given to the company.

#### *Appeals*

- 6 (1) A company may appeal against any of the following—
- (a) a charging notice, and
  - (b) a consequential amendment notice.
- (2) Notice of an appeal must be given to HMRC, in writing, within the period of 30 days beginning with the day on which the notice is given.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) On an appeal under this paragraph, the Tribunal may—
- (a) confirm the notice to which the appeal relates,
  - (b) amend the notice, or
  - (c) cancel the notice.
- (5) References in Part 5 of TMA 1970 (appeals etc) to an assessment are to be read as including a charging notice or a consequential amendment notice, unless the context requires otherwise.

#### *Payment of interest*

- 7 (1) An officer of HMRC may give a notice (an “interest charging notice”) to a company requiring it to pay an amount of interest in relation to one or more additional amounts after they have been paid.
- (2) The amount of interest to be paid in relation to an additional amount is to be calculated in accordance with paragraph 8 (and not in accordance with provision made in or under section 87A of TMA 1970 (interest on overdue corporation tax etc) or section 178 of FA 1989 (setting of rates of interest)).
- (3) An interest charging notice must—
- (a) state the additional amount to which each amount of interest relates,
  - (b) explain how each amount of interest has been calculated, and
  - (c) state the period within which payment must be made.
- (4) An officer of HMRC may vary or cancel an interest charging notice.
- (5) Where an interest charging notice is given to a company, the company must pay the amounts specified in the notice within the period of 30 days beginning with the day on which the notice is given to the company.
- (6) The payment of those amounts may not be postponed on any grounds.

#### *Calculation of interest payable in relation to an additional amount*

- 8 (1) The interest which an additional amount carries is to be calculated in accordance with Chapter 5 of the Commission Regulation.

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- (2) For the purposes of Article 11(1) of the Commission Regulation—
- (a) the reference to the date on which unlawful aid was first put at the disposal of the beneficiary is to be read as a reference to the date when an additional amount would have become due and payable by the company on which it is chargeable if the company had not benefited from the unlawful state aid identified in the Commission Decision, and
  - (b) the reference to the date of recovery of the aid is to be read as a reference to the date on which that additional amount is paid.
- (3) In this paragraph, “the Commission Regulation” means Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

*Liability of related company*

- 9 (1) This paragraph applies where the company on which an additional amount is (or would be) chargeable for a relevant accounting period in accordance with paragraph 1(1) (the “original company”)—
- (a) does not fully pay the additional amount before the date on which it must be paid in accordance with paragraph 2(5),
  - (b) does not fully pay any interest on an additional amount before the date on which that interest must be paid in accordance with paragraph 7(5),
  - (c) is in liquidation, in administration or in receivership, or
  - (d) has been dissolved.
- (2) Where this paragraph applies by virtue of sub-paragraph (1)(a) or (c), each related company of the original company is jointly and severally liable with the original company for—
- (a) the additional amounts which are chargeable on the original company for each of its relevant accounting periods, and
  - (b) interest on those amounts.
- (3) Where this paragraph applies by virtue of sub-paragraph (1)(b), each related company of the original company is jointly and severally liable with the original company for interest on the additional amounts which are chargeable on the original company for each of its relevant accounting periods.
- (4) Where this paragraph applies by virtue of sub-paragraph (1)(d), each related company of the original company is jointly and severally liable for—
- (a) the additional amounts which would have been chargeable on the original company for each of its relevant accounting periods if it had not been dissolved, and
  - (b) interest on those amounts.
- (5) Where a related company is liable for an additional amount or interest on an additional amount, an officer of HMRC may, for the purposes of giving effect to the Commission Decision, exercise any function under this Schedule in relation to the related company as if it were the original company in respect of which it is a related company.

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- (6) In applying paragraphs 2 to 5 of this Schedule for the purposes of sub-paragraph (5), references to a relevant accounting period of a company are to be read as references to a relevant accounting period of the original company.
- (7) Where this paragraph applies by virtue of sub-paragraph (1)(a), sub-paragraphs (2) to (6) have effect only in relation to so much of the additional amount as was not paid by the original company before the date on which it had to be paid in accordance with paragraph 2(5).
- (8) Where this paragraph applies by virtue of sub-paragraph (1)(b), sub-paragraphs (2) to (6) have effect only in relation to so much of any interest on the additional amount as was not paid by the original company before the date on which it had to be paid in accordance with paragraph 7(5).
- (9) Where this paragraph applies by virtue of sub-paragraph (1)(c) or (d), sub-paragraphs (2) to (6) have effect only in relation to so much of the additional amount, or so much of any interest on the additional amount, as was not paid by the original company before the date on which sub-paragraph (1)(c) or (d) began to apply.
- (10) For the purposes of sub-paragraph (1)(c)—
- (a) a company is “in liquidation” if it is in liquidation within the meaning of section 247 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company;
  - (b) a company is “in administration” if it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989, or there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to the appointment of an administrator under either of those Schedules;
  - (c) a company is “in receivership” if there is in force in relation to it an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or any corresponding order under the law of a country or territory outside the United Kingdom.
- (11) In this paragraph, a company is a “related company” of an original company if—
- (a) at any time when the original company benefited from the unlawful state aid identified in the Commission Decision, it was a member—
    - (i) of the same group as the original company,
    - (ii) of a consortium which at that time owned the original company, or
    - (iii) of the same group as a company which at that time was a member of a consortium owning the original company, and
  - (b) an officer of HMRC has given the company a notice informing the company that it is a related company for the purposes of this paragraph.
- (12) For the purposes of sub-paragraph (11)(a)—

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- (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5 of CTA 2010, and
  - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.
- (13) For the purposes of sub-paragraph (11)(a)(i), two companies are members of the same group if—
- (a) one is the 51% subsidiary of the other, or
  - (b) both are 51% subsidiaries of a third company.
- (14) For the purposes of sub-paragraph (11)(a)(iii), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 of CTA 2010 (group relief).
- (15) An officer of HMRC may give a notice to a company for the purposes of sub-paragraph (11)(b) only if the officer considers that the company, by virtue of its relationship or a transaction with the original company, received a benefit or experienced an advantage, whether directly or indirectly, as a result of the unlawful state aid identified in the Commission Decision.

#### *Variation of the Commission Decision*

- 10 (1) If the Commission Decision is revoked or annulled, the Treasury must by regulations make such provision as they consider appropriate for the purposes of securing, so far as reasonably practicable, that any company affected by this Schedule is put into the position it would have been in if—
- (a) the Commission Decision had not been made, and
  - (b) this Schedule had not had effect.
- (2) The duty in sub-paragraph (1) does not apply if there is, or the Treasury consider that there may be, a further decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union which is to the same or similar effect as the Commission Decision.
- (3) The Treasury may by regulations make such provision as they consider appropriate to take account of—
- (a) any variation of the Commission Decision, or
  - (b) any further decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union which is to the same or similar effect as the Commission Decision.
- (4) The power to make regulations under this paragraph may (among other things) be exercised by modifying—
- (a) this Part;
  - (b) provision made under this Part.
- (5) In sub-paragraph (4), “modify” includes amend, repeal or revoke.

#### *Consequential modifications*

- 11 Section 371UE (appeal affecting more than one person) has effect as if an appeal against a charging notice or a consequential amendment notice by virtue

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of paragraph 6(1) of this Schedule were a “relevant appeal” for the purposes of that section.

*Management of the CFC charge for the purposes of the Commission Decision*

- 12 (1) The application to the CFC charge of enactments applying generally to corporation tax by section 371UB (application of the Taxes Acts to the CFC charge) has effect subject to—
- (a) this Schedule, and
  - (b) any other modifications that are necessary to give effect to the Commission Decision.
- (2) Any relevant time limit is disapplied so far as necessary to give effect to the Commission Decision.
- (3) A time limit is relevant if it would otherwise have applied or had effect, by or under an enactment (apart from this Schedule), in connection with—
- (a) the CFC charge charged on a company,
  - (b) any other tax payable by that company,
  - (c) the tax liability of another company, or
  - (d) any adjustment, amendment, claim, election, application or notice relating to a matter within paragraphs (a) to (c).

*Interpretation*

- 13 (1) For the purposes of this Schedule, a relevant accounting period of a company is any accounting period of the company for corporation tax purposes during some or all of which the unlawful state aid identified in the Commission Decision was available (whether or not the company considers that it benefited from it).
- (2) Terms used in this Schedule which are defined or explained in Schedule 18 to FA 1998 have the same meaning in this Schedule as in that Schedule.
- (3) In this Schedule—
- “additional amount” has the meaning given by paragraph 1(2);
  - “charging notice” has the meaning given by paragraph 2(2)(b);
  - the “Commission Decision” means Commission [Decision \(EU\) 2019/1352](#) of 2 April 2019 on the state aid SA.44896 implemented by the United Kingdom concerning the CFC Group Financing Exemption;
  - “consequential amendment notice” has the meaning given by paragraph 4(1);
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “interest charging notice” has the meaning given by paragraph 7(1);
  - “officer of HMRC” means an officer of Revenue and Customs.”



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