SCHEDULES

SCHEDULE 3

Section 28

CORPORATION TAX: THE NON-CORPORATE DISTRIBUTION RATE: SUPPLEMENTARY PROVISIONS

PART 1

GENERAL PROVISIONS

Introduction

1 The provisions of this Schedule supplement section 13AB (corporation tax: the non-corporate distribution rate).

Meaning of "non-corporate distribution"

2 (1) A "non-corporate distribution" means a distribution made by a company to a recipient who is not a company.

"Recipient" here means the person beneficially entitled to the distribution.

(2) A distribution made to a partnership is treated as made to the partners notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

Calculation of company's "underlying rate of corporation tax"

3 (1) A company's underlying rate of corporation tax for an accounting period is determined as follows:

Step One

Take the company's basic profits for the accounting period ("BP").

Step Two

Find the amount of corporation tax chargeable on those profits apart from section 13AB ("CT").

Step Three

The company's underlying rate of corporation tax is the percentage determined as follows—

$$\left(\frac{CT}{BP}\right) \times 100$$

(2) In determining CT—

(a) apply the rate of corporation tax fixed for companies generally, and

(b) if the company is entitled to and claims relief under section 13 (small companies' relief) or section 13AA (corporation tax starting rate), apply the provisions of those sections.

But take no account of any other relief that is given by reducing the amount or rate of tax payable (as opposed to the amount of the profits chargeable to tax).

Matching: distributions not exceeding basic profits

4 Where in an accounting period the total amount of the distributions made (or treated as made) by a company does not exceed the amount of its basic profits, the amount of the company's basic profits matched with non-corporate distributions is equal to the total amount of the non-corporate distributions made (or treated as made) by the company in that period.

Matching: distributions exceeding basic profits

5 Where in an accounting period the total amount of the distributions made (or treated as made) by a company exceeds its basic profits, the amount of the company's basic profits for that period matched with non-corporate distributions is—

$$\left(\frac{NCD}{D}\right) \times BP$$

where—

NCD is the total amount of the non-corporate distributions made (or treated as made) by the company in that period;

D is the total amount of all the distributions made (or treated as made) by the company in that period; and

BP is the amount of the company's basic profits for that period.

PART 2

ALLOCATION OF EXCESS NCDS TO OTHER COMPANIES

Allocation of excess NCDs to other companies

6 (1) This Part of this Schedule provides for the allocation to other companies of any amount by which the total amount of the non-corporate distributions made (or treated as made) by a company (the "distributing company") in an accounting period (the "distribution period") exceeds the amount of the company's basic profits for that period that are matched under paragraph 5.

(2) That amount is referred to in this Schedule as "excess NCDs".

(3) A company to which an amount of excess NCDs is allocated (a "recipient company") is treated as if it had made a non-corporate distribution of that amount in the period to which it is allocated.

Allocation of excess NCDs to other group companies

7 (1) If at the end of the distribution period the distributing company is a member of a group, excess NCDs must be allocated, so far as possible, to the other group companies.

The allocation must be made in accordance with the following rules.

(2) Excess NCDs may not be allocated to a recipient company unless it has available profits for the accounting period to which they are to be allocated.

(3) The amount of a recipient company's available profits for an accounting period is given by:

$$BP - NCD$$

where—

BP is the amount of that company's basic profits for that accounting period, and

NCD is the total amount of non-corporate distributions made (or treated as made) by that company in that period.

(4) The maximum amount of excess NCDs that may be allocated to an accounting period of a recipient company is:

$$\left(\frac{NCD}{D}\right) \times AP$$

where—

NCD is the total amount of the non-corporate distributions made (or treated as made) by the distributing company in the distribution period;

D is the total amount of all the distributions made (or treated as made) by that company in that period; and

AP is the amount of the recipient company's available profits for that period.

(5) In determining the amount of a company's available profits at any time account shall only be taken of excess NCDs allocated to it by virtue of an allocation made before that time that remains (or so far as it remains) effective.

Allocation of excess NCDs: period or periods to which amount to be allocated

8 (1) Excess NCDs falling to be allocated to another company under paragraph 7 (allocation to other group companies) may be allocated to any accounting period identified by this paragraph as a corresponding accounting period.

If there is more than one such period, excess NCDs must be allocated to the first to the full extent possible before any allocation is made to the second, and so on.

(2) The accounting period of a recipient company that includes the last day of the distribution period is its first corresponding accounting period.

Unless that accounting period is shorter than the distribution period, it is the recipient company's only corresponding accounting period.

(3) If the first corresponding accounting period is shorter than the distribution period, any subsequent accounting period of the recipient company beginning before the end of the period specified in sub-paragraph (4) is a corresponding accounting period.

(4) The period referred to in sub-paragraph (3) is a period—

(a) of the same length as the distribution period, and

(b) beginning on the same day as the recipient company's first corresponding accounting period.

Allocation of excess NCDs: degrouping

9 (1) This paragraph applies where a company ("company A") ceases to be a member of the same group as another company ("company B") but the companies remain under the control of the same person or persons.

This is referred to below as "degrouping".

(2) If at the end of any accounting period of company A ending on or after the degrouping but no more than two years after the degrouping—

(a) company A has excess NCDs that (apart from this paragraph) cannot be allocated to other companies,

(b) the business activities of company A and any other companies in the same group as that company are negligible, and

(c) the business activities of company B and any other companies in the same group as that company are not negligible,

the provisions of sub-paragraphs (3) to (5) below apply.

The end of the accounting period when the above conditions are met is referred to in those provisions as "the relevant time".

(3) Company B and any other companies in the same group as that company at the relevant time (the "B group") shall be treated for the purposes of allocating the excess NCDs as if they were members of the same group as company A.

(4) Any excess NCDs remaining after any allocation made by virtue of sub-paragraph (3) must be allocated—

(a) to company B or, if different, the company in the B group that at the relevant time has the greatest number of members who are not companies, and

(b) to the accounting period of that company that includes the relevant time.

This allocation is not subject to the restrictions in paragraph 7 on the amount that may be allocated to another company.

(5) If there is more than one company answering the description in sub-paragraph (4)(a), the excess NCDs shall be apportioned between them according to the amount of their basic profits for the accounting period to which the amount falls to be allocated.

(6) In this paragraph "control" shall be construed in accordance with section 416(2) to (6).

Allocation of excess NCDs: procedure

10 (1) The basic rule is that the allocation of excess NCDs to another company must be made by the distributing company with the agreement of the recipient company.

(2) If excess NCDs are not so allocated within nine months after—

(a) in a case within paragraph 7, the end of the distribution period, or

(b) in a case within paragraph 9, the relevant time within the meaning of that paragraph,

they may be allocated at any time thereafter by an officer of the Board.

(3) An allocation under sub-paragraph (1) or (2) may be varied—

(a) by agreement between the relevant companies, or

(b) if further excess NCDs are required to be allocated and no variation is agreed within one year after its becoming apparent that a variation is required, by an officer of the Board.

Any such variation may in turn be varied as mentioned in paragraph (a) or (b).

(4) No allocation or variation of an allocation of excess NCDs may be made after the end of the period of one year after whichever of the following last occurs—

(a) the final determination of the tax affairs of the distributing company in relation to the distribution period,

(b) in a case within paragraph 7, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods that are or could be corresponding accounting periods, or

(c) in a case within paragraph 9, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods to which an allocation may be made under that paragraph.

(5) If circumstances arise as a result of which the tax affairs of any such company for any such period are reopened, an allocation or variation of an allocation may (and shall if necessary) be made at any time before the end of the period of one year after the tax affairs of the company are again finally determined.

(6) For the purposes of sub-paragraphs (4) and (5) the tax affairs of a company for a period are finally determined when the amounts are conclusively determined within the meaning of paragraph 88 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: conclusiveness of amounts stated in return).

(7) References in this paragraph to variation of an allocation include reducing the amount allocated to nil.

Allocation of excess NCDs: amounts proving to be excessive

11 (1) This paragraph applies where an amount of excess NCDs allocated to another company in accordance with this Part of this Schedule later proves to be excessive.

(2) The excess shall revert to the distributing company.

(3) If allocations to two or more companies are involved, the amounts shall revert in the opposite order to that in which the allocations were made.

(4) In the case of allocations made at the same time, the amounts reverting to the distributing company shall be in proportion to the original allocations.

Allocation of excess NCDs to companies not resident in the United Kingdom

12 (1) The provisions of this Part of this Schedule as to the allocation of excess NCDs to other companies apply, with any necessary modifications, to companies that are not resident in the United Kingdom as they apply to companies that are so resident.

(2) In particular, references to the company's basic profits and accounting periods shall be read in relation to a company that is not resident in the United Kingdom as references to what would have been the case if the company had been resident in the United Kingdom at all material times.

PART 3

OTHER SUPPLEMENTARY PROVISIONS

Carry forward of excess NCDs

13 (1) Any excess NCDs not allocated to another company under Part 2 shall be carried forward by the distributing company.

(2) That company shall be treated as if it had made a non-corporate distribution of the amount carried forward (in addition to any distributions actually made by it) in its next accounting period.

(3) Where an allocation is made under paragraph 9(4) references in this paragraph to the distributing company shall be read as references to the company to which that allocation is made (which is treated by virtue of paragraph 6(3) as having made a distribution in the accounting period to which the allocation is made).

Definition of a group

14 (1) For the purposes of section 13AB and this Schedule a company and all its 51% subsidiaries form a group, and if any of those subsidiaries have 51% subsidiaries the group includes them and their 51% subsidiaries, and so on.

(2) The question whether a company is a 51% subsidiary shall be determined in accordance with section 838, subject to the following provisions.

(3) A company ("company A") shall be treated for the purposes of this Schedule as if it were a 51% subsidiary of another company ("company B") if company B has rights to, or in fact receives, more than 50% of the distributions made by company A.

(4) For the purposes of this paragraph a company shall be treated as not being the owner—

(a) of any share capital that it owns directly if a profit on the sale of the shares would be treated as a trading receipt of its trade, or

(b) of any share capital that it owns indirectly and that is owned directly by a body corporate for which a profit on the sale of the shares would be treated as a trading receipt of its trade.

Accounting period treated as ending if company ceases to be a member of a group

15 (1) Section 13AB and this Schedule apply in relation to an accounting period of a company in which it ceases to be a member of the group as if there were two accounting periods, one ending immediately before the company ceases to be a member of the group and the other consisting of the remainder of the period.

(2) For this purpose a company ceases to be in a group if it and another company cease to be in the same group, whether as a result it is no longer in a group, becomes a member of another group or continues to be in the same group as one or more other companies.

Treatment of distributions made otherwise than in an accounting period

16 For the purposes of section 13AB and this Schedule, a non-corporate distribution made by a company otherwise than in an accounting period of the company shall be treated as made in the next accounting period of the company.

Holding companies treated as carrying on a business

17 (1) For the purposes of section 13AB and this Schedule a holding company that is not otherwise carrying on a business shall be deemed to be carrying on a business and to be within the charge to corporation tax.

(2) For this purpose "a holding company" means a company that has one or more 51% subsidiaries from which it receives or has received one or more distributions.

Interpretation

18 In section 13AB and this Schedule—

"basic profits" means the amount of a company's profits for an accounting period on which corporation tax finally falls to be borne;

"corresponding accounting period", in relation to a recipient company, has the meaning given by paragraph 8;

"distributing company" has the meaning given by paragraph 6(1);

"distribution" does not include an amount treated as a dividend under paragraph 2(2) of Schedule 23A (manufactured dividends and interest);

"distribution period" has the meaning given by paragraph 6(1); and

"excess NCDs" has the meaning given by paragraph 6(2);

"group" has the meaning given by paragraph 14 (and references to a group company and membership of a group have a corresponding meaning);

"non-corporate distribution" has the meaning given by paragraph 2;

"recipient company" has the meaning given by paragraph 6(3);

"underlying rate of corporation tax" has the meaning given by paragraph 3.