

## SCHEDULES

### SCHEDULE 5

Section 11

#### FINANCING COSTS AND INCOME OF GROUP COMPANIES

##### *Introduction*

- 1 Part 7 of TIOPA 2010 (tax treatment of financing costs and income) is amended as follows.

##### *Amendment of Chapter 1 (introduction)*

- 2 In section 260(9) (introduction), after “interpretative” insert “and supplementary”.

##### *Amendments of Chapter 2 (application of Part)*

- 3 (1) Section 262 (UK net debt of the worldwide group for period of account of worldwide group) is amended as follows.
- (2) In subsection (1)—
- (a) for “The reference in section 261” substitute “A reference in this Chapter”, and
  - (b) after “relevant group company” insert “or a group securitisation company”.
- (3) In subsection (8), in paragraphs (a) and (b), after “relevant group company” insert “or a group securitisation company”.
- 4 In section 263 (net debt of a company), for subsections (3) to (5) substitute—
- “(3) For the purposes of this section, a company’s “relevant liabilities” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
- (a) borrowing (whether short term or long term and including borrowing by way of overdraft),
  - (b) liabilities in respect of finance leases,
  - (c) arrangements not within paragraph (a) or (b) that—
    - (i) are financial liabilities,
    - (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (d) such other matters as may be specified in regulations made by the Commissioners.
- (4) For the purposes of this section, a company’s “relevant assets” as at any date are the amounts that are disclosed in the balance sheet of the company as at that date in respect of—
- (a) cash and cash equivalents,

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- (b) lending (whether short term or long term and including lending by way of overdraft),
  - (c) net investments, or net cash investments, in finance leases,
  - (d) securities issued by—
    - (i) the government of the United Kingdom or any territory outside the United Kingdom,
    - (ii) any public or local authority in the United Kingdom or any territory outside the United Kingdom, or
    - (iii) any company or other body of persons,
  - (e) arrangements not within paragraphs (b) to (d) that—
    - (i) are financial assets,
    - (ii) produce for the company a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (f) such other matters as may be specified in regulations made by the Commissioners.
- (5) But an amount disclosed in the balance sheet of a company in respect of—
- (a) the company’s share capital, or
  - (b) shares or other equity interests in any other entity,
- is not a “relevant liability” or a “relevant asset” for the purposes of this section.
- (6) For the purposes of subsections (3) and (4) a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (7) In subsection (6)(c) “the relevant time” means the time when the company becomes party to the arrangement.
- (8) For the purposes of subsections (3) and (4) an arrangement is “short term” if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.
- (9) In this section the following expressions have the meaning for the time being given by generally accepted accounting practice—
- “cash”,
  - “cash equivalent”,
  - “equity interest”,
  - “finance lease”,
  - “financial asset”,
  - “financial liability”,

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“net cash investment”, in relation to a finance lease, and  
“net investment”, in relation to a finance lease.”

- 5 (1) Section 264 (worldwide gross debt) is amended as follows.
- (2) In subsection (1), for “The reference in section 261” substitute “A reference in this Chapter”.
- (3) In subsection (2), for paragraphs (a) to (c) substitute—
- “(a) borrowing (whether short term or long term and including borrowing by way of overdraft),
  - (b) liabilities in respect of finance leases,
  - (c) arrangements not within paragraph (a) or (b) that—
    - (i) are financial liabilities,
    - (ii) produce for any person a return in relation to any amount which is economically equivalent to interest, and
    - (iii) are not short term, or
  - (d) such other matters as may be specified in regulations made by the Commissioners.”
- (4) For subsections (3) and (4) substitute—
- “(3) But an amount disclosed in the balance sheet of the group in respect of the share capital of any member of the group is not a “relevant liability” for the purposes of this section.
- (4) For the purposes of subsection (2) a return produced for a person by an arrangement in relation to any amount is “economically equivalent to interest” if (and only if)—
- (a) it is reasonable to assume that it is a return by reference to the time value of that amount of money,
  - (b) it is at a rate reasonably comparable to what is (in all the circumstances) a commercial rate of interest, and
  - (c) at the relevant time there is no practical likelihood that it will cease to be produced in accordance with the arrangement unless the person by whom it falls to be produced is prevented (by reason of insolvency or otherwise) from producing it.
- (5) In subsection (4)(c) “the relevant time” means the time when any member of the group becomes party to the arrangement.
- (6) For the purposes of subsection (2) an arrangement is “short term” if it terminates, or its terms provide for it to terminate, within 12 months of its coming into force.
- (7) In this section the following expressions have the meaning for the time being given by the accounting standards in accordance with which the financial statements of the group are drawn up—
- “finance lease”, and
  - “financial liability”.
- (8) For provision about references in this Part to financial statements of the worldwide group, and amounts disclosed in financial statements, see sections 346 to 349.”

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- 6 (1) Section 265 (references to amounts disclosed in balance sheet) is amended as follows.
- (2) In the heading, for “relevant group” substitute “a”.
- (3) In subsections (1) and (5), omit “relevant group”.
- 7 After section 265 insert—

**“265A Different accounting treatment used at company and group levels**

- (1) This section applies where—
- (a) for the purposes of the computation of the UK net debt of the worldwide group, the amount of a relevant liability of a company (“the company-level relevant liability”) is determined in accordance with section 263,
  - (b) for the purposes of the computation of the worldwide gross debt of the group, the amount of a relevant liability of the worldwide group (“the group-level relevant liability”) is determined in accordance with section 264,
  - (c) the company-level relevant liability is an amount in respect of the same matter as—
    - (i) the group-level relevant liability, or
    - (ii) a liability comprised in the group-level relevant liability, and
  - (d) the amount of the company-level relevant liability would not, apart from this section, be the same as the amount of the liability mentioned in paragraph (c)(i) or (ii).
- (2) For the purposes of the computation mentioned in subsection (1)(a), the amount of the company-level relevant liability is the amount of the liability mentioned in subsection (1)(c)(i) or (ii).”

8 In section 266(3) (qualifying financial services groups), in the definition of “UK trading income”, after “relevant group company” insert “or a group securitisation company”.

9 In section 270 (relevant dealing in financial instruments), for subsection (1) substitute—

- “(1) In this Chapter “financial instrument” means—
- (a) anything that is a financial instrument for any purpose of the FSA handbook, or
  - (b) an instrument not within paragraph (a) that is an option, future or contract for differences.

(1A) In this section “option”, “future” and “contract for differences” have the same meaning as in Part 7 of CTA 2009 (see sections 580 to 582 of that Act).”

- 10 (1) Section 271 (UK trading income of the worldwide group) is amended as follows.
- (2) In subsections (2), (3), (4) and (6), omit “relevant group”.
- (3) In subsection (7), for “relevant group company” substitute “group securitisation company”.

11 In section 273 (foreign currency accounting), in subsections (1), (2) and (3)(a), omit “relevant group”.

12 After section 273 insert—

**“273A Meaning of “group securitisation company”**

For the purposes of this Chapter, a company is a “group securitisation company” at any time during a period of account of the worldwide group if—

- (a) it is, at that time, a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010, and
- (b) its results are disclosed in the financial statements of the worldwide group for the period.”

*Amendments of Chapter 3 (disallowance of deductions)*

13 After section 275 (meaning of “company to which this Chapter applies”) insert—

**“275A Meaning of “dual resident investing company”**

For the purposes of this Chapter, a company is a “dual resident investing company” in relation to the relevant period of account if that period, or any part of it, is a period in respect of which the company is prevented, because of section 109(2) of CTA 2010 (restriction on losses etc surrenderable by dual resident), from surrendering losses under Chapter 2 of Part 5 of that Act (group relief).”

14 After section 280 (statement of allocated disallowances: requirements), insert—

**“280A Statement of allocated disallowances: dual resident investing companies**

(1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279 that (pursuant to section 280(4)) lists, and specifies an amount or amounts in relation to, a dual resident investing company.

(2) The statement does not comply with section 280(4) unless—

- (a) the companies listed pursuant to paragraph (a) of that provision include each company to which this Chapter applies that—
  - (i) is not a dual resident investing company, and
  - (ii) has one or more financing expense amounts for the relevant period of account, and
- (b) the financing expense amounts specified pursuant to paragraph (b) of that provision include, in relation to each such company, each such financing expense amount.”

15 (1) Section 284 (failure of reporting body to submit statement of allocated disallowances) is amended as follows.

(2) In subsection (2), for “Each company to which this Chapter applies that has a net financing deduction for the relevant period of account that is greater than nil” substitute “Where a company to which this Chapter applies (“company A”) has a net financing deduction for the relevant period of account that is greater than nil, it”.

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(3) After subsection (2) insert—

“(2A) The total of the reductions required to be made by company A because of subsection (2) is—

- (a) where company A or any other company to which this Chapter applies is a dual resident investing company, the amount determined in accordance with section 284A, and
- (b) otherwise, the amount determined in accordance with subsection (3).”

(4) In subsection (3)—

- (a) for “total of the reductions required to be made by a company because of subsection (2)” substitute “amount referred to in subsection (2A)(b)”, and
- (b) in the definition of NFD, for “the company” substitute “company A”.

16 After section 284 insert—

**“284A Section 284: supplementary**

- (1) This section contains provision for determining the total of the reductions required to be made by company A because of section 284(2) in a case in which company A, or any other company to which this Chapter applies, is a dual resident investing company.
- (2) If company A is not a dual resident investing company, the total of the reductions required to be made by company A is—

$$\frac{\text{NFD}}{\text{TEA} - X} \times \text{TDA}$$

or, if lower, NFD.

- (3) If company A is a dual resident investing company, the total of the reductions required to be made by company A is—

$$\frac{\text{NFD}}{X} \times (\text{TDA} - (\text{TEA} - X))$$

or, if that amount is negative or zero, nil.

- (4) In subsections (2) and (3)—

NFD, TEA and TDA have the same meaning as in section 284(3),  
and

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X is the total of the net financing deductions of all the companies to which this Chapter applies that are dual resident investing companies.”

*Amendment of Chapter 4 (exemption of financing income)*

- 17 In section 292(5)(a) (statement of allocated exemptions: requirements), for “and C” substitute “, C and D”.

*Amendments of Chapter 5 (intra-group financing income where payer denied deduction)*

- 18 (1) Section 305 (financing income amounts of a company) is amended as follows.
- (2) In subsection (1), for “or C” substitute “, C or D”.
- (3) After subsection (5) insert—
- “(5A) Condition D is that the amount is an amount that would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax in respect of income that—
- (a) is receivable from another company, and
- (b) is in consideration of the provision of a guarantee of any borrowing of that other company.”
- (4) In subsection (6), for “or C” (in both places) substitute “, C or D”.
- (5) After that subsection insert—
- “(7) In this section the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—
- “exchange gain”,
- “impairment loss”, and
- “related transaction”.”

*Amendments of Chapter 7 (“financing expense amount” and “financing income amount”)*

- 19 (1) Section 314 (financing income amounts of a company) is amended as follows.
- (2) In subsection (1), for “or C” substitute “, C or D”.
- (3) After subsection (5) insert—
- “(5A) Condition D is that the amount is an amount that would, apart from this Part, be brought into account for the purposes of corporation tax in a relevant accounting period of the company in respect of income that—
- (a) is receivable from another company, and
- (b) is in consideration of the provision of a guarantee of any borrowing of that other company.”
- 20 In section 315 (interpretation of sections 313 and 314), omit ““impairment”,”.
- 21 (1) Section 316 (group treasury companies) is amended as follows.
- (2) In subsection (1)(b), for “or C” substitute “, C or D”.
- (3) For subsection (8) substitute—

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“(8) Condition 3 is that at least 90% of the relevant income of the company for the relevant period is group treasury revenue.”

22 After section 318 (companies engaged in oil extraction activities) insert—

**“318A Industrial and provident societies**

(1) This section applies if, apart from this section, an amount (“the relevant amount”) is—

- (a) a financing expense amount of a company because of meeting condition A in section 313, or
- (b) a financing income amount of a company because of meeting condition A in section 314.

(2) The relevant amount is treated as not being a financing expense amount or a financing income amount of the company if it is such an amount only because of section 499 of CTA 2009 (industrial and provident society payments treated as interest under loan relationship).”

23 In section 321 (short-term loan relationships)—

- (a) in subsection (4), omit “other”, and
- (b) omit subsection (7).

24 (1) Section 327 (educational and public bodies) is amended as follows.

(2) In subsection (2), omit the “or” at the end of paragraph (c) and after that paragraph insert—

“(ca) a relevant public body, or”.

(3) In subsection (4), omit the “and” after the definition of “designated educational establishment” and after the definition of “health service body” insert “, and relevant public body” means a body that—

- (a) is not within subsection (2)(a) to (c) and is not a government department,
- (b) acts under any enactment for public purposes and not for its own profit, and
- (c) is not within the charge to corporation tax.”

(4) After that subsection insert—

“(5) In this section “enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
- (b) an enactment contained in, or in an instrument made under—
  - (i) an Act of the Scottish Parliament,
  - (ii) Northern Ireland legislation, or
  - (iii) a Measure or Act of the National Assembly for Wales.”

*Amendment of Chapter 8 (the “tested expense amount” and “tested income amount”)*

25 After section 331 (companies with net financing deduction or net financing income that is small) insert—



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### **“331A Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the tested expense amount or the tested income amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or
    - (ii) if no amount is so disclosed, nil, and
  - (b) the “tax amount” in respect of a matter is—
    - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
    - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
    - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.”

#### *Amendments of Chapter 9 (the “available amount”)*

- 26 (1) Section 332 (the available amount) is amended as follows.
- (2) In subsection (1)—
    - (a) in paragraphs (a), (b) and (c), for “amounts borrowed” substitute “borrowing”,
    - (b) in paragraph (d), for “ancillary costs relating to amounts borrowed” substitute “expenses ancillary to borrowing”, and
    - (c) in paragraphs (e) and (f), for “cost” substitute “expense”.
  - (3) After subsection (1) insert—
    - “(1A) For the purposes of this section, expenses are “ancillary” to borrowing if and only if they are incurred directly—
      - (a) in bringing borrowing into existence or in altering its terms, or
      - (b) in making payments in respect of borrowing.
    - (1B) Where—

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- (a) a member of the group incurs expenses for the purpose of bringing borrowing into existence but the borrowing is not brought into existence, or
- (b) a member of the group incurs expenses for the purpose of altering the terms of borrowing but the terms are not altered,

the expenses are treated as falling within subsection (1A)(a) to the same extent as if the borrowing had been brought into existence or the terms had been altered.”

27 After section 332 (the available amount) insert—

**“332A Groups containing securitisation companies**

- (1) This section applies where a member of the worldwide group is a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010 at any time during a period of account of the worldwide group.
- (2) The reference in section 332(1) to amounts disclosed in the financial statements of the worldwide group for the period are to the amounts that would have been disclosed in those statements had they been prepared on the assumption that the company mentioned in subsection (1) was not a member of the worldwide group.

**332B Partnerships: expenses of borrowing**

- (1) This section applies where—
  - (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and
  - (b) at any time during the period of account, a liability of the partnership in respect of borrowing (“the partnership liability”) is outstanding.
- (2) For the purposes mentioned in subsection (1), the financial statements of the worldwide group for the period of account are to be treated as if—
  - (a) they did not disclose any amounts falling within section 332(1)(a) to (d) relating to the partnership liability, and
  - (b) they disclosed instead such amounts as would have fallen within that provision had the financial statements been prepared on the following two assumptions.
- (3) The first assumption is that, at each time during the period of account at which the partnership liability was outstanding, each member of the partnership owed the appropriate proportion of the partnership liability to the same person, and on the same terms, as it was in fact owed by the partnership.
- (4) In subsection (3) “the appropriate proportion”, in relation to a member of the partnership at any time, is the proportion of the partnership’s profits to which the member is entitled at that time under the partnership’s profit sharing arrangements.
- (5) The second assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of any expenses relating to the partnership liability.

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- (6) In subsection (5) “the appropriate proportion” in relation to a member of the partnership, is the proportion of the partnership’s profits to which the member is entitled, over the period of account of the worldwide group, under the partnership’s profit sharing arrangements.
- (7) The purposes referred to in subsection (2) are the purposes of—
  - (a) this Chapter, and
  - (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.

### **332C Partnerships: other expenses**

- (1) This section applies where—
  - (a) a member of the worldwide group is a member of a partnership at any time during a period of account of the worldwide group, and
  - (b) during the period of account, the partnership incurs expenses in relation to finance leases or debt factoring (“the relevant partnership expenses”).
- (2) For the purposes mentioned in subsection (5), the financial statements of the worldwide group for the period of account are to be treated as if—
  - (a) they did not disclose any of the relevant partnership expenses, and
  - (b) they disclosed instead such amounts as would have fallen within section 332(1)(e) or (f), had the financial statements been prepared on the following assumption.
- (3) The assumption is that, during the period of account, each member of the partnership incurred the appropriate proportion of the relevant partnership expenses.
- (4) In subsection (3) “the appropriate proportion”, in relation to a member of the partnership, is the proportion of the partnership’s profits to which the member is entitled, over the period of account of the worldwide group, under the partnership’s profit sharing arrangements.
- (5) The purposes referred to in subsection (2) are the purposes of—
  - (a) this Chapter, and
  - (b) any other provision of the Corporation Tax Acts so far as it applies for the purposes of this Chapter.”

28 After section 336 (meaning of accounting expressions used in this Chapter) insert—

### **“336A Mismatches between tax treatment and accounting treatment**

- (1) The Commissioners may make regulations for the purpose of altering the way in which the available amount is calculated in a case in which an accounts amount in respect of a matter is not equal to the tax amount in respect of that matter.
- (2) For this purpose—
  - (a) the “accounts amount” in respect of a matter is—
    - (i) the amount disclosed in the financial statements of the worldwide group in respect of the matter, or

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- (ii) if no amount is so disclosed, nil, and
- (b) the “tax amount” in respect of a matter is—
  - (i) the amount of the deduction to which a member of the worldwide group is entitled under a provision of the Corporation Tax Acts in respect of the matter,
  - (ii) if more than one member is entitled to such a deduction, the total such deductions, or
  - (iii) if no member is entitled to such a deduction, nil.
- (3) Regulations under this section may amend any provision of this Part.
- (4) Regulations under this section may have effect in relation to periods of account of the worldwide group beginning on or after the beginning of the calendar year in which the regulations are made.
- (5) Regulations under this section may include provision for the worldwide group to elect that the regulations (or any of them)—
  - (a) are not to apply in relation to the group, or
  - (b) are not to apply in relation to periods of account of the worldwide group beginning before the date on which the regulations are made.”

*Amendments of Chapter 10 (other interpretative provisions)*

- 29 In the heading of Chapter 10, for “PROVISIONS” substitute “AND SUPPLEMENTARY PROVISIONS”.
- 30 In section 339 (meaning of “ultimate parent”), for subsection (1)(b) to (d) substitute—
  - “(b) is either—
    - (i) a corporate entity that is not a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies, or
    - (ii) a relevant non-corporate entity,
  - (c) is not a collective investment scheme or an entity that would be a collective investment scheme but for the fact that it is a body corporate, and
  - (d) is not a subsidiary (whether direct or indirect) of an entity that meets each of the conditions in paragraphs (a) to (c).”
- 31 (1) Section 345 (meaning of “UK group company” and “relevant group company”) is amended as follows.
  - (2) For subsections (2) and (3) substitute—
    - “(2) A company is a “UK group company” if—
      - (a) it is a member of the worldwide group, and
      - (b) it meets conditions A and B.
    - (3) A company is a “relevant group company” if—
      - (a) it is a member of the worldwide group, and
      - (b) it meets conditions A, B and C.”
  - (3) After subsection (4) insert—

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“(4A) Condition B is that the company is not a securitisation company within the meaning of section 83(2) of FA 2005 or section 623 of CTA 2010.”

(4) In subsection (5), for “B” substitute “C”.

32 In section 351 (expressions taking their meaning from international accounting standards), after subsection (1) insert—

“(1A) The definition of “subsidiary” in subsection (1) does not affect the meaning of the expression “75% subsidiary” (which is defined in section 1154 of CTA 2010).”

33 After section 353 (other expressions) insert—

### “353A Effect of Part on parties to capital market arrangements

(1) This section applies in relation to cases in which a company (“company A”)

- (a) is a party to a capital market arrangement at any time during a period of account of the worldwide group, and
- (b) is subject to a liability to corporation tax for a relevant accounting period as a result of the operation of this Part.

(2) The Commissioners may by regulations make provision under which company A and a company that is a relevant group company at any time in the same period of account (“company B”) may jointly elect that company B is to take sole responsibility for discharging the liability.

(3) Where an election has effect, the liability is treated for all purposes as if it were a liability of company B and not of company A.

(4) The regulations may include provision about—

- (a) when an election may be made (which may, in particular, be before the accounting period for which the liability arises);
- (b) circumstances in which HMRC may or must—
  - (i) accept or reject an election, or
  - (ii) terminate the effect of an election that has already been accepted;
- (c) the effect of termination by virtue of paragraph (b)(ii);
- (d) the transfer from company A to company B of liabilities to penalties.

(5) The provision that may be made by virtue of subsection (4)(b)(i) or (ii) includes provision conferring a discretion on HMRC.

(6) In this section “capital market arrangement” has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act).

### 353B Regulations and orders

Regulations or orders under this Part may—

- (a) make different provision for different cases or circumstances,
- (b) include supplementary, incidental and consequential provision, or
- (c) make transitional provision and savings.”

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*Amendment of transitional provision*

- 34 In Schedule 9 to TIOPA 2010 (transitionals and savings), in paragraph 32(3) (exclusion of certain debits and credits), for “or C” substitute “, C or D”.

*Amendments of index of defined expressions*

- 35 In Part 5 of Schedule 11 to TIOPA 2010 (index of defined expressions), insert at the appropriate places—

“dual resident investing company (in Chapter 3 of Part 7)	section 275A”
“group securitisation company (in Chapter 2 of Part 7)	section 273A”
“UK net debt (in Chapter 2 of Part 7)	section 262”
“worldwide gross debt (in Chapter 2 of Part 7)	section 264”

*Commencement*

- 36 (1) Part 7 of, and Schedule 9 to, TIOPA 2010 are treated as always having had effect subject to the amendments made by this Schedule.
- (2) Schedule 15 to FA 2009 (which contains provision rewritten in that Part and that Schedule and which continues to apply in relation to accounting periods ending before 1 April 2010) is treated as always having had effect subject to corresponding amendments.
- (3) The power to make regulations under section 353A of TIOPA 2010 (inserted by paragraph 33 above) may only be exercised in relation to liabilities to corporation tax falling due and payable on or after the day on which this Act is passed.

*Election to defer the application of some of the amendments made by this Schedule*

- 37 (1) If an authorised corporate entity makes an election under this paragraph, the amendments made by paragraphs 4 and 5(3) and (4) do not have effect in relation to any period of account of the worldwide group that begins before the day on which this Act is passed.
- (2) The election—
- (a) must be signed on behalf of the authorised corporate entity by the appropriate person, and
  - (b) must be received by HMRC no later than one year after the end of the first period of account of the worldwide group that begins on or after 1 January 2010 (“the initial period of account”).
- (3) The following are authorised corporate entities in relation to the worldwide group—
- (a) if an appointment under section 276 or 288 of TIOPA 2010 has effect in relation to the initial period of account, the company appointed under that section, and
  - (b) the ultimate UK parent of the worldwide group.
- (4) The election is irrevocable.
- (5) In this paragraph “the appropriate person”, in relation to an authorised corporate entity, means—

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*Status: This is the original version (as it was originally enacted).*

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- (a) where the authorised corporate entity is a company, the proper officer of the company, or
  - (b) such other person as may for the time being have the express, implied or apparent authority of the authorised corporate entity to act on its behalf for the purposes of this paragraph.
- (6) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.
- (7) In this paragraph “the ultimate UK parent”, in relation to the worldwide group, means an entity that—
- (a) is a member of the worldwide group,
  - (b) is a corporate entity that is not a limited liability partnership in relation to which section 1273(1) of CTA 2009 (limited liability partnerships) applies,
  - (c) is not a collective investment scheme or an entity that would be a collective investment scheme but for the fact that it is a body corporate,
  - (d) is resident in the United Kingdom, and
  - (e) is not a subsidiary (whether direct or indirect) of an entity that meets each of the conditions in paragraphs (a) to (d).
- (8) The following expressions have the same meaning in this paragraph as they have in Part 7 of TIOPA 2010—
- “collective investment scheme”;
  - “corporate entity”;
  - “period of account of the worldwide group”;
  - “subsidiary”;
  - “the worldwide group”.