Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 1

OVERVIEW

1 Overview of Act

(1) The following Parts contain provisions relating to international aspects of taxation—

(a) Parts 2 and 3 (double taxation relief),

(b) Parts 4 and 5 (transfer pricing and advance pricing agreements),

(c) Part 6 (tax arbitrage),

(d) Part 7 (tax treatment of financing costs and income), and

(e) Part 8 (offshore funds).

(2) Part 9 contains amendments of tax legislation to relocate enactments to appropriate places.

(3) In particular, Part 9 contains amendments of TCGA 1992, ITTOIA 2005 and ITA 2007 that insert provisions relating to—

(a) oil activities (see section 364 and Schedule 1),

(b) alternative finance arrangements (see section 365 and Schedule 2),

(c) leasing arrangements involving finance leases or loans (see section 367 and Schedule 3),

(d) sale and lease-back etc (see section 368 and Schedule 4),

(e) factoring of income etc (see section 369 and Schedule 5), and

(f) UK representatives of non-UK residents (see section 370 and Schedule 6).

(4) Part 10 contains provisions of general application (including definitions for the purposes of the Act).

(5) For abbreviations used in this Act see section 373, and for defined expressions used in Parts 2 to 8 see Schedule 11.

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 1

DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

Double taxation arrangements

2 Giving effect to arrangements made in relation to other territories

(1) If Her Majesty by Order in Council declares—

(a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and

(b) that it is expedient that those arrangements should have effect,

those arrangements have effect.

(2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.

(3) The taxes are—

(a) income tax,

(b) corporation tax,

(c) capital gains tax,

(d) petroleum revenue tax, and

(e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).

(4) In this Part "double taxation arrangements" means arrangements that have effect under subsection (1).

3 Arrangements may include retrospective or supplementary provision

(1) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision for relief from tax for periods before the passing of this Act, or

(b) provision for relief from tax for periods before the making of the arrangements.

(2) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision as to income that is not subject to double taxation,

(b) provision as to chargeable gains that are not subject to double taxation, or

(c) provision as to foreign-field consideration that is not subject to double taxation.

(3) In subsection (2)(c) "foreign-field consideration" means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

4 Meaning of "double taxation" in sections 2 and 3

(1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.

(2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

5 Orders under section 2: contents and procedure

(1) If an Order under section 2 ("the later Order") revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.

(2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

6 The effect given by section 2 to double taxation arrangements

(1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.

(2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—

(a) for relief from income tax or corporation tax,

(b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,

(c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(d) for determining the income or chargeable gains to be attributed to non-UK resident persons,

(e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons,

(f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, or

(g) for conferring on non-UK resident persons the right to a tax credit under section 397(1) of ITTOIA 2005 in respect of qualifying distributions made to them by UK resident companies.

(3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—

(a) for relief from capital gains tax,

(b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(c) for determining the capital gains to be attributed to non-UK resident persons,

(d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or

(e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.

(4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

(5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).

(6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.

(7) In subsection (3) "UK resident person" and "non-UK resident person" have the meaning given by section 989 of ITA 2007.

(8) In subsection (5) "special withholding tax" has the same meaning as in Part 3 (see section 136).

7 General regulations

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.

(2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.

(3) Subsection (4) applies to tax if—

(a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and

(b) it is discovered that the arrangements did not apply to that payment.

(4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—

(a) by assessment on the person entitled to the payment from which the tax is not deducted, or

(b) by deduction from subsequent payments.

(5) In subsection (1) "the treaty sections" means—

sections 2 to 6,

section 134(1), and

section 134(3) to (6) so far as relating to section 134(1).

(6) This section does not apply in relation to—

(a) petroleum revenue tax, or

(b) taxes imposed by the law of a territory outside the United Kingdom that—

(i) are of a similar character to petroleum revenue tax, and

(ii) are not of a similar character to income tax, corporation tax or capital gains tax.

Unilateral relief arrangements

8 Interpretation: "unilateral relief arrangements" means rules 1 to 9, etc

(1) In this Part "unilateral relief arrangements", in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.

(2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—

(a) taxes which are charged on income and which correspond to income tax,

(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and

(c) taxes which are charged on capital gains and which correspond to capital gains tax.

(3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

9 Rule 1: the unilateral entitlement to credit for non-UK tax

(1) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and

(c) corresponding to UK tax,

is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.

(2) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to any capital gain accruing in the territory, and

(c) corresponding to UK tax,

is to be allowed against any capital gains tax calculated by reference to that gain.

(3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.

(4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—

(a) it is charged on income and corresponds to income tax, or

(b) it is charged on income or chargeable gains and corresponds to corporation tax.

(5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.

(6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

(7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of "in the territory".

(8) Subsections (1) and (2) are subject to sections 11 and 12.

10 Rule 2: accrued income profits

(1) Subsection (2) applies if—

(a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,

(b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and

(c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.

(2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.

(3) The amount of the credit allowed under subsection (2) is given by—

$$AIP \times FTR$$

where—

AIP is the amount of the accrued income profits, and

FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

(4) Subsection (2) is subject to section 11.

(5) In subsection (1)(b) "the relevant tax year" means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.

11 Rule 3: interaction between double taxation arrangements and rules 1 and 2

(1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.

(2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.

(3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

12 Rule 4: cases in which, and calculation of, credit allowed for tax on dividends

(1) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.

(2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P's profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.

(3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—

(a) directly or indirectly controlled, or

(b) were a subsidiary of a company that directly or indirectly controlled,

at least 10% of the voting power in P.

(4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

13 Rule 5: credit for tax charged directly on dividend

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if—

(a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and

(b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.

14 Rule 6: credit for underlying tax on dividend paid to 10% associate of payer

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if conditions A and B are met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

at least 10% of the voting power in P.

(5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

15 Rule 7: credit for underlying tax on dividend paid to sub-10% associate

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been reduced below 10%,

(b) the recipient shows that the reduction below the 10% limit (and any further reduction)—

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the reduction, the recipient—

(i) indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in P.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—

(a) the voting power in P as a result of which relief was due under section 14 before the reduction, or

(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

16 Rule 8: credit for underlying tax on dividend paid by exchanged associate

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been acquired in exchange for voting power in another company ("X"),

(b) before the exchange, the recipient—

(i) directly or indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in X,

(c) the recipient shows that the exchange (and any reduction after the exchange) —

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the exchange, the recipient—

(i) indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in X.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—

(a) the voting power in X as a result of which relief was due under section 14 before the exchange, or

(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

17 Rule 9: credit in relation to dividends for spared tax

(1) Subsection (2) applies if—

(a) under the law of the territory, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in the territory ("company A") in respect of any of its profits,

(b) company A pays a dividend out of those profits to another company resident in the territory ("company B"),

(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and

(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.

(2) The spared tax is to be taken into account—

(a) for the purposes of sections 9 to 16, and

(b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C,

as if it had been payable and paid.

(3) References in these rules and that Chapter—

(a) to tax payable or chargeable, or

(b) to tax not chargeable directly or by deduction,

are to be read in accordance with subsection (2).

(4) Except as provided by subsection (2), in relation to any dividend paid—

(a) by a company resident in the territory,

(b) to a company resident in the United Kingdom,

credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.

(5) Subsection (4) has effect despite any double taxation arrangements—

(a) made in relation to the territory, or

(b) made in relation to any other territory outside the United Kingdom,

which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.

(6) In this section "these rules" means sections 9 to 16 and this section.

CHAPTER 2

DOUBLE TAXATION RELIEF BY WAY OF CREDIT

Effect to be given to credit for foreign tax allowed against UK tax

18 Entitlement to credit for foreign tax reduces UK tax by amount of the credit

(1) Subsection (2) applies if—

(a) under double taxation arrangements, or

(b) under unilateral relief arrangements for a territory outside the United Kingdom,

credit is to be allowed against any income tax, corporation tax or capital gains tax chargeable in respect of any income or chargeable gain.

(2) The amount of those taxes chargeable in respect of the income or gain is to be reduced by the amount of the credit.

(3) In subsection (1) "credit"—

(a) in relation to double taxation arrangements, means credit for tax payable under the law of the territory in relation to which the arrangements are made, and

(b) in relation to unilateral relief arrangements for a territory outside the United Kingdom, means credit for tax payable under the law of that territory,

but see sections 12(3) and 63(5) (dividends: certain tax payable otherwise than under the law of a territory treated as payable under that law).

(4) Subsection (2) applies subject to—

(a) the following provisions of this Chapter,

(b) section 106 (Chapter 1 and this Chapter operate for capital gains tax purposes separately from their operation for the purposes of other United Kingdom taxes), and

(c) Chapter 2 of Part 18 of ICTA (double taxation relief: pooling of foreign dividends paid before 1 July 2009).

(5) Credit is allowed under subsection (2) against any tax only if, under the arrangements concerned, credit is allowable against that tax.

(6) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.

19 Time limits for claims for relief under section 18(2)

(1) Subsections (2) and (3) apply to a claim for relief under section 18(2).

(2) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to income tax or capital gains tax for a tax year, the claim must be made on or before—

(a) the fourth anniversary of the end of that tax year, or

(b) if later, the 31 January following the tax year in which the foreign tax is paid.

(3) If the claim is for credit for foreign tax in respect of any income or chargeable gain charged to corporation tax for an accounting period, the claim must be made not more than—

(a) four years after the end of that accounting period, or

(b) if later, one year after the end of the accounting period in which the foreign tax is paid.

20 Foreign tax includes tax spared because of international development relief

(1) Subsections (2) and (4) apply if the arrangements are double taxation arrangements.

(2) For the purposes of this Chapter, any amount within subsection (3) is to be treated as having been payable.

(3) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of that territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

(b) about which provision is made in double taxation arrangements.

(4) References in this Chapter—

(a) to tax payable or chargeable, or

(b) to tax not chargeable directly or by deduction,

are to be read in accordance with subsection (2).

(5) Subsections (2) and (4) have effect subject to—

(a) subsection (6), and

(b) sections 31(4) and 32(5) (income and gains not to be increased in calculations under section 31 or 32 by amounts treated by this section as having been payable).

(6) If section 63(5) applies because conditions A and B in section 63 are met, relief is not given in accordance with section 63(5) (relief for certain tax underlying dividends paid between related companies) because of this section unless double taxation arrangements make express provision for the relief.

(7) Subsection (6) does not affect the operation of section 17(2) (treatment, for purposes of unilateral relief, of dividend paid by foreign company that has received dividends from a company benefiting from tax-sparing relief).

Interpretation of Chapter

21 Meaning of "the arrangements", "the non-UK territory", "foreign tax" etc

(1) In this Chapter (except section 18)—

"the arrangements" means the arrangements mentioned in section 18(1),

"the non-UK territory" means the territory mentioned in section 18(3),

"foreign tax" means tax chargeable under the law of the non-UK territory—

(a) for which credit may be allowed under the arrangements, and

(b) which is not special withholding tax, and

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction.

(2) In subsection (1) "special withholding tax" has the same meaning as in Part 3 (see section 136).

(3) The definitions in subsection (1) are to be read with sections 17(3) and 20(4) (meaning of references to tax payable or chargeable, and of references to tax not chargeable directly or by deduction).

(4) See also section 8(2) (meaning of references to tax payable or paid under the law of a territory outside the United Kingdom).

Credits where same income charged to income tax in more than one tax year

22 Credit for foreign tax on overlap profit if credit for that tax already allowed

(1) Subsection (2) applies in relation to foreign tax ("FT") paid in respect of any income if—

(a) the income is overlap profit, and

(b) credit for FT would have been allowed under section 18(2) against income tax chargeable for a tax year ("year L") in respect of the income but for the fact that credit for FT had been allowed against income tax chargeable in respect of the income for a previous tax year.

(2) Credit for FT is allowed against income tax chargeable for year L in respect of the income.

(3) The amount of credit allowed for year L under subsection (2) in respect of the income must not exceed the difference between—

(a) T, and

(b) the amount of credit which was in fact allowed, under subsection (2) or section 18(2), in respect of the income for any earlier tax year or years.

(4) For the purposes of subsection (3)(a), T is the amount ("A") of the foreign tax charged on the income, but this is subject to subsections (5) to (7).

(5) If Y exceeds FP—

$$T = \frac{Y}{FP} \times A$$

where—

Y is the number of tax years for which credit is allowed, under subsection (2) or section 18(2), against income tax in respect of the income, and

FP is the number of foreign periods of assessment.

(6) For the purposes of subsection (5), a tax year or foreign period of assessment for which part only of the income is charged to tax is counted not as one year or period but as a fraction of a year or period, the fraction being—

$$\frac{P}{W}$$

where—

P is that part of the income, and

W is the whole of the income.

(7) If the same income is charged to different foreign taxes for different foreign periods of assessment—

(a) subsection (5) (read with subsection (6)) is to be applied separately to each of those taxes, and

(b) T is the sum of those taxes after subsection (5) has been applied to them in accordance with paragraph (a).

(8) In this section—

"overlap profit" has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see section 204 of that Act), and

"foreign period of assessment", in relation to any income, means a period for which the income is, under the law of the non-UK territory, charged to the foreign tax concerned.

23 Time limits for claims for relief under section 22(2)

(1) Relief under section 22(2) requires a claim.

(2) Any claim for relief by way of credit under section 22(2) against income tax for any tax year must be made on or before the fifth anniversary of the 31 January following that tax year, subject to subsection (3).

(3) If there is more than one tax year in respect of which such relief may be given, any claim for the relief must be made on or before the fifth anniversary of the 31 January following the later of those tax years.

24 Claw-back of relief under section 22(2)

(1) Subsections (4) and (5) apply if—

(a) credit against income tax for any tax year is allowed under section 22(2) in respect of any income ("the original income"), and

(b) the original income, or any part of it, contributes to an amount which, under section 205 or 220 of ITTOIA 2005, is deducted in calculating profits of a later tax year ("the later year").

(2) For the purposes of subsections (4) and (5), amount A is the difference between—

(a) the amount of the credit which, as a result of the application of sections 18(2) and 22(2) and subsection (5) of this section, has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (1), and

(b) the amount of the credit which, ignoring sections 22 and 23 and this section, would have been allowed under section 18(2) against income tax in respect of so much of the original income as contributes as mentioned in subsection (1).

(3) For the purposes of subsections (4) and (5), amount B is the amount of credit which, on the assumption that no amount were deducted under section 205 or 220 of ITTOIA 2005, would be allowable under section 18(2) against income tax in respect of income arising in the later year from the same source as the original income.

(4) If amount A exceeds amount B—

(a) no credit is allowed for income arising from that source in the later year,

(b) an amount of income tax equal to the excess is charged for the later year, and

(c) the liable person is liable for the tax.

(5) If amount B exceeds amount A, the liable person is allowed for the later year an amount of credit equal to the excess.

(6) In subsections (4) and (5) "the liable person" means the person liable for income tax charged on the income (if any) arising in the later year from the same source as the original income.

(7) For the purposes of subsections (1) to (6), it is to be assumed that, where an amount is deducted under section 220 of ITTOIA 2005, each of the overlap profits added together at Step 1 of the calculation in subsection (3) of that section contributes to that amount in the proportion which that overlap profit bears to the total that is the result of that Step.

(8) In this section—

(a) "overlap profit" has the same meaning as in Chapter 15 of Part 2 of ITTOIA 2005 (see section 204 of that Act), and

(b) references to income arising in any year include income received in the year that is income on which income tax is to be calculated by reference to the amount of income received in the United Kingdom.

Cases in which credit not allowed

25 Credit not allowed if relief allowed against overseas tax

(1) Subsection (2) applies if relief may be allowed—

(a) under the arrangements, or

(b) under the law of the non-UK territory in consequence of the arrangements,

in respect of an amount of tax that would, but for the relief, be payable under the law of that territory.

(2) Credit under section 18(2) is not allowed in respect of that tax, whether or not the relief has been used.

26 Credit not allowed under arrangements unless taxpayer is UK resident

(1) Credit under section 18(2) against income tax, corporation tax or capital gains tax for a chargeable period is not allowed unless the person in respect of whose income or chargeable gains the tax is chargeable is UK resident for that period.

(2) Sections 28 to 30 (credit under unilateral relief arrangements allowed to some non-UK resident persons) contain exceptions to subsection (1).

(3) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

(4) In subsection (1) so far as it relates to capital gains tax "UK resident" has the meaning given by section 989 of ITA 2007.

27 Credit not allowed if person elects against credit

Credit under section 18(2) against income tax, corporation tax or capital gains tax charged on any income or chargeable gains of a person is not allowed if the person elects for credit not to be allowed in respect of that income or those gains.

Exceptions to requirement to be UK resident

28 Unilateral relief for Isle of Man or Channel Islands tax

(1) Subsection (2) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

(b) provide for credit to be allowed for tax paid under the law of the Isle of Man ("the Isle of Man tax").

(2) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Isle of Man tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in the Isle of Man.

(3) Subsection (4) applies if the arrangements—

(a) are unilateral relief arrangements for a territory outside the United Kingdom, and

(b) provide for credit to be allowed for tax paid under the law of any of the Channel Islands ("the Channel Islands tax").

(4) Credit under section 18(2) against any of the UK taxes for a chargeable period may be allowed for the Channel Islands tax if the person in respect of whose income or chargeable gains the UK tax is payable is—

(a) resident for that period in the United Kingdom, or

(b) resident for that period in any of the Channel Islands.

(5) Each of the following is a UK tax for the purposes of this section—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(6) In subsections (2) and (4) so far as they relate to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

29 Unilateral relief for tax on income from employment or office

(1) Subsection (3) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) In subsection (3) "overseas tax" means tax—

(a) paid under the law of the territory,

(b) charged on income and corresponding to income tax or to corporation tax, and

(c) calculated by reference to income from an office or employment the duties of which are performed wholly or mainly in the territory.

(3) Credit for overseas tax may be allowed under section 18(2) against income tax for a tax year—

(a) calculated by reference to that income, and

(b) charged on employment income,

if the person performing the duties is resident in the United Kingdom, or resident in the territory, for that year.

(4) For the purposes of subsection (2)(b) tax may correspond to income tax or corporation tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

30 Unilateral relief for non-UK tax on non-resident's UK branch or agency etc

(1) Subsection (2) applies if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom.

(2) Credit for tax within subsection (3) or (4) may be allowed under section 18(2) against any of the UK taxes if the territory is not one in which the person or company concerned is liable to tax by reason of domicile, residence or place of management.

(3) Tax is within this subsection if the arrangements provide for credit for it to be allowed against income tax or corporation tax, and it is paid under the law of the territory in respect of the income or chargeable gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(4) Tax is within this subsection if the arrangements provide for credit for it to be allowed against capital gains tax, and it is paid under the law of the territory in respect of the capital gains—

(a) of a branch or agency in the United Kingdom of a non-UK resident person who is not a company, or

(b) of a permanent establishment in the United Kingdom of a non-UK resident company.

(5) Relief under subsection (2) may not exceed the relief which would have been available if—

(a) the branch or agency, or permanent establishment, had been a UK resident person, and

(b) the income or gains had been income or gains of that person.

(6) Each of the following is a UK tax for the purposes of subsection (2)—

(a) income tax,

(b) corporation tax, and

(c) capital gains tax.

(7) In this section so far as it relates to capital gains tax—

"branch or agency" has the meaning given by section 10(6) of TCGA 1992,

"company" has the same meaning as in TCGA 1992 (see section 288 of that Act),

"permanent establishment", in relation to a company, has the meaning given by Chapter 2 of Part 24 of CTA 2010, and

"UK resident" or "non-UK resident", in relation to a company or other person, has the meaning given by section 989 of ITA 2007.

Calculating income or gains in respect of which credit is allowed

31 Calculation of income or gain where remittance basis does not apply

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or gain, and

(b) section 32(2) (cases where UK tax payable by reference to amount received in UK) does not apply.

(2) In calculating the amount of the income or gain for the purposes of income tax, corporation tax or capital gains tax—

(a) no deduction is to be made for foreign tax or special withholding tax, whether in respect of the same or any other income or gain, and

(b) if the credit is for foreign tax in respect of a dividend, the amount of the dividend is to be treated as increased by any underlying tax within subsection (3).

(3) In relation to a dividend, underlying tax is within this subsection if—

(a) under the arrangements it is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend,

(b) because the amount given by Step 2 of the calculation under section 58 is more than the amount given by Step 3 of that calculation, it is not to be taken into account in considering the questions mentioned in paragraph (a), or

(c) under section 60(3) it is not to be taken into account in considering those questions.

(4) The amount of any income or gain is not to be increased under subsection (2)(b) by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(5) Subsections (1) to (4) have effect for the purposes of corporation tax despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of CTA 2009 (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In this section "special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and

(b) in respect of which a claim has been made under that Part.

32 Calculation of amount received where UK tax charged on remittance basis

(1) Subsection (2) applies if—

(a) under the arrangements, credit is to be allowed for foreign tax in respect of any income or capital gain, and

(b) income tax or capital gains tax is payable by reference to the amount received in the United Kingdom.

(2) For the purposes of whichever of income tax and capital gains tax is payable as mentioned in subsection (1)(b), the amount received is to be treated as increased—

(a) by the amount of the foreign tax in respect of the income or gain,

(b) by the amount of any special withholding tax levied in respect of the income or gain, but see subsection (4), and

(c) if the credit is for foreign tax in respect of a dividend, by any underlying tax that under the arrangements is to be taken into account in considering whether any, and (if so) what, credit is to be allowed in respect of the dividend.

(3) For the purposes of subsection (4), a gain is a "special gain" if—

(a) it is a chargeable gain that accrues to a person on a disposal by the person of assets,

(b) the consideration for the disposal consists of or includes an amount of savings income, and

(c) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

(4) If the credit is for foreign tax in respect of a gain that is a special gain, the amount of the increase under subsection (2)(b) is given by—

$$AWT \times \frac{GUK}{SG - AWT}$$

where—

AWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal concerned,

GUK is the amount of the gain received in the United Kingdom, and

SG is the amount of the gain.

(5) The amount of any income or gain is not to be increased under this section by reference to any foreign tax which, although not payable, is treated by section 20(2) as having been payable.

(6) In this section—

"savings income" has the same meaning as in Part 3 (see section 136), and

"special withholding tax" means special withholding tax—

(a) within the meaning of Part 3 (see section 136), and

(b) in respect of which a claim has been made under that Part.

Limits on credit: general rules

33 Limit on credit: minimisation of the foreign tax

(1) The credit under section 18(2) must not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the non-UK territory, and

(b) under double taxation arrangements made in relation to that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1), any question as to the steps which it would have been reasonable for a person to take is to be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part.

34 Reduction in credit: payment by reference to foreign tax

(1) Subsection (2) applies if—

(a) credit for foreign tax is to be allowed to a person ("P") under the arrangements, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

35 Disallowed credit: use as a deduction

(1) Subsection (2) applies if the application of section 36(2) or 42(2) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The taxpayer's income is to be treated as reduced by the amount of the disallowed credit.

(3) Subsection (4) applies if the application of section 40(2) prevents an amount of credit for foreign tax from being allowable against capital gains tax.

(4) The taxpayer's chargeable gains are to be treated as reduced by the amount of the disallowed credit.

(5) Subsection (2) or (4) applies only so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(6) For the purposes of subsection (5), payment of the foreign tax is to be taken into account despite section 31(2).

Limit on, and reduction of, credit against income tax

36 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's income tax for any tax year.

(2) The amount of credit in respect of income from any particular source must not exceed the difference between—

(a) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - X$$

and

(b) the amount of income tax to which the person would be liable for the tax year if the person were charged to income tax on—

$$TI - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of income from more than one source, apply subsection (2) successively to the income from each source, taking the sources in the order which will result in the greatest reduction in the person's income tax liability for the tax year.

(4) In subsection (2)—

TI is the person's total income for the tax year,

X is the income (if any) to which subsection (2) has already been applied, and

C is the income in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of income tax under subsection (2) are—

(a) the calculation is to be made in accordance with sections 31 and 32, and

(b) no credit is to be allowed for foreign tax, and

(c) no reduction is to be made under section 26 of FA 2005 (trusts for the benefit of a vulnerable beneficiary), but

(d) any other income tax reduction under the Income Tax Acts is to be made.

(6) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.

(7) For the purposes of subsection (3) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and

(b) unilateral relief arrangements for a territory outside the United Kingdom.

37 Credit against tax on trade income: further rules

(1) Apply section 36(2) in accordance with subsections (2) to (5) if the tax against which the credit is to be allowed is income tax on trade income.

(2) Treat the reference to income from any particular source as a reference to trade income arising out of a transaction, arrangement or asset.

(3) C is the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(4) In calculating an amount of income tax under section 36(2) deduct, from the income arising out of the transaction, arrangement or asset in connection with which the credit arises, deductions which would be allowed in a calculation of the taxpayer's liability in respect of that income.

(5) Treat section 36(3) as referring—

(a) to trade income instead of income, and

(b) to a transaction, arrangement or asset instead of a source.

(6) In subsection (4) "deductions" includes a just and reasonable apportionment of deductions that relate—

(a) partly to the income arising out of the transaction, arrangement or asset in connection with which the credit arises, and

(b) partly to other matters.

(7) In this section "trade income" means income chargeable to tax under—

(a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts), or

(b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts).

38 Credit against tax on royalties: further rules

(1) Subsection (2) applies if—

(a) the arrangements are double taxation arrangements, and

(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 36(2)—

(a) royalty income arising in more than one foreign jurisdiction in a tax year in respect of the asset is to be treated as a single item of income, and

(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

39 Credit reduced by reference to accrued income losses

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person is entitled under section 18(2) to credit against income tax.

(3) Condition B is that the income tax is calculated by reference to income consisting of interest in respect of which the person is entitled under section 679 of ITA 2007 (no income tax on interest so far as matched by accrued income losses) to an exemption from liability to income tax.

(4) Condition C is that—

(a) the arrangements are unilateral relief arrangements for a territory outside the United Kingdom and the credit is allowed as a result of section 9, or

(b) the arrangements are double taxation arrangements and the credit is allowed as a result of the inclusion in the arrangements of any provision corresponding to that section.

(5) The amount of the credit is to be reduced to the amount given by—

$$\frac{I - E}{I} \times C$$

where—

I is the amount of the interest,

E is the amount of the exemption, and

C is the amount the credit would be apart from this subsection.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning in this section as in that Chapter.

Limit on credit against capital gains tax

40 Amount of limit

(1) This section is about the amount of credit allowed under section 18(2) against a person's capital gains tax for any tax year.

(2) The amount of credit in respect of any particular capital gain must not exceed the difference between—

(a) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - X$$

and

(b) the amount of capital gains tax to which the person would be liable for the tax year if the person were charged to capital gains tax on—

$$TG - (X + C)$$

(3) If credit is allowed (whether or not under the same tax-relief arrangements) in respect of more than one capital gain, apply subsection (2) successively to each capital gain, taking the gains in the order which will result in the greatest reduction in the person's capital gains tax liability for the tax year.

(4) In subsection (2)—

TG is the total amount of the chargeable gains accruing to the person in the tax year,

X is the total amount of the gains (if any) to which subsection (2) has already been applied, and

C is the amount of the gain in respect of which the credit is to be allowed.

(5) The rules for calculating an amount of capital gains tax under subsection (2) are—

(a) the calculation is to be made in accordance with sections 31 and 32, and

(b) no credit is to be allowed for foreign tax.

(6) For the purposes of subsection (3) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and

(b) unilateral relief arrangements for a territory outside the United Kingdom.

Limit on total credit against income tax and capital gains tax

41 Amount of limit

(1) In subsection (2) "the total credit" means—

$$F + G$$

where—

F is the total credit, under all tax-relief arrangements, allowed under section 18(2) against a person's income tax for any tax year, and

G is the total credit, under all tax-relief arrangements, allowed under section 18(2) against the person's capital gains tax for that tax year.

(2) The total credit is not to be more than—

$$I + C - A$$

where—

I is the total income tax payable by the person for the tax year,

C is the total capital gains tax payable by the person for the tax year, and

A is the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by the person in the tax year.

(3) In calculating I and C for the purposes of subsection (2), no reduction is to be made for credit under section 18(2).

(4) Subsection (2) applies in addition to sections 36 and 40.

(5) For the purposes of subsection (1) the following are "tax-relief arrangements"—

(a) double taxation arrangements, and

(b) unilateral relief arrangements for a territory outside the United Kingdom.

Limit on credit against corporation tax

42 Amount of limit

(1) Subsection (2) is about the amount of credit allowed under section 18(2) against corporation tax to which a company is liable in respect of any income or chargeable gain.

(2) The credit must not exceed—

$$R \times IG$$

where—

R is the rate of corporation tax payable by the company, before any credit under this Part, on the company's income or chargeable gains for the accounting period in which the income arises or the gain accrues, and

IG is the amount of the income or gain (but see subsection (3)).

(3) For the purposes of applying subsection (2), IG is reduced (or extinguished) by any amount allocated to it under—

section 52(2) (general deductions),

section 53(2) (earlier years' deficits on loan relationships),

section 54(2) or (4) (debits on loan relationships),

section 55(5) (current year's deficits on loan relationships), or

section 56(2) (debits on intangible fixed assets).

(4) Subsection (2) is to be read with—

section 43, which, if the company has a permanent establishment outside the United Kingdom, is about attributing profits to the establishment for the purposes of applying subsection (2),

sections 44 to 49, which modify how subsection (2) applies in connection with allowing credit against tax on trade income (as defined in section 44), and

sections 50 and 51, which require subsection (2) to be applied as if corporation tax were charged in a modified way on profits of the company for the period from loan relationships and intangible fixed assets.

43 Profits attributable to permanent establishment for purposes of section 42(2)

(1) The permanent-establishment provisions apply with the necessary modifications in determining for the purposes of section 42(2) how much of a UK resident company's

chargeable profits is attributable to a permanent establishment of the company outside the United Kingdom.

(2) In subsection (1)—

"chargeable profits" means profits on which corporation tax is chargeable, and

"the permanent-establishment provisions" means—

(a) Chapter 4 of Part 2 of CTA 2009 (profits attributable to permanent establishment), and

(b) any regulations made under section 24 of CTA 2009 (application to insurance companies).

44 Credit against tax on trade income

(1) Apply section 42(2) in accordance with subsections (2) and (3) if the tax against which the credit is to be allowed is corporation tax on income that is trade income.

(2) The amount of the credit must not exceed the corporation tax attributable to the income arising out of the transaction, arrangement or asset in connection with which the credit arises.

(3) In calculating the amount of corporation tax attributable to any income, take into account—

(a) deductions which would be allowed in calculating the company's liability, and

(b) expenses of a company connected with the company, so far as reasonably attributable to the income,

but see section 49 (restriction if company is a bank or is connected with a bank).

(4) In subsection (3)(a) "deductions" includes a just and reasonable apportionment of deductions that relate—

(a) partly to the transaction, arrangement or asset from which the income arises, and

(b) partly to other matters.

(5) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (3)(b).

(6) In this section "trade income" means—

(a) income chargeable to tax under Chapter 2 or 15 of Part 3 of CTA 2009 (trade profits and post-cessation receipts),

(b) income chargeable to tax under Chapter 3 or 9 of Part 4 of CTA 2009 (profits of property businesses and post-cessation receipts),

(c) income which arises from a source outside the United Kingdom and is chargeable to tax under section 979 of CTA 2009 (charge to tax on income not otherwise charged), and

(d) any other income or profits which by a provision of ICTA is or are—

(i) chargeable to tax under Chapter 2 of Part 3 of CTA 2009, or

(ii) calculated in the same way as the profits of a trade,

but does not include income to which section 99 of this Act (insurance companies) applies.

(7) In subsection (6) the references—

(a) to income chargeable under Chapter 15 of Part 3 of CTA 2009, and

(b) to income chargeable under Chapter 9 of Part 4 of CTA 2009,

do not include income that would, but for the repeal by CTA 2009 of section 103 of ICTA (post-cessation receipts where pre-cessation profits calculated on an earnings basis and other post-cessation receipts that become due or are ascertained after cessation), have been chargeable to corporation tax under that section.

45 Credit against tax on trade income: anti-avoidance rules

(1) If a company ("A") carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person ("B") a main purpose of which is to alter the effect of section 44(2) and (3) in relation to A, income received in pursuance of the scheme or arrangement is to be treated for the purposes of section 44(2) and (3) as trade income of B (and not as income of A).

(2) Income of a person ("D") is to be treated for the purposes of section 44 as trade income (if it is not otherwise trade income) of D if—

(a) the income is received by D as part of a scheme or arrangement entered into by D and a connected person ("C"),

(b) had C received the income, it would be reasonable to assume that it would be trade income of C, and

(c) a main purpose of the scheme or arrangement is to produce the result that section 44(2) and (3) will not have effect in relation to the income because it is received by D.

(3) For the purposes of subsection (2)(b) it is to be assumed that, in the case of any relevant transaction to which a relevant person is a party, C were that party to the transaction.

(4) In subsection (3)—

"relevant person" means—

(a) D, or

(b) any other connected person who is a party to the scheme or arrangement mentioned in subsection (2), and

"relevant transaction" means any of the transactions giving rise to the income mentioned in subsection (2)(b).

(5) In subsections (2) to (4) "connected person" means a person with whom D is connected.

(6) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of subsection (5).

(7) In this section "trade income" has the same meaning as in section 44.

46 Applying section 44(2): asset in hedging relationship with derivative contract

(1) If an asset is in a hedging relationship with a derivative contract, section 44(2) applies in relation to the asset as if the income arising from the asset is the income arising from the asset and the contract taken together, subject to subsection (2).

(2) Take account of the income or loss from the derivative contract only so far as reasonably attributable to the hedging relationship.

(3) For the purposes of subsection (1), an asset is in a hedging relationship with a derivative contract if—

(a) the asset is acquired as a hedge of risk in connection with the contract, or

(b) the contract is entered into as a hedge of risk in connection with the asset.

(4) If an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that is conclusive for the purposes of subsection (3).

47 Applying section 44(2): royalty income

(1) Subsection (2) applies if—

(a) the arrangements are double taxation arrangements, and

(b) royalties, as defined in the arrangements, are paid in respect of an asset in more than one foreign jurisdiction.

(2) For the purposes of section 44(2)—

(a) royalty income arising in more than one foreign jurisdiction in an accounting period in respect of the asset is to be treated as income arising from a single asset, and

(b) credits available for foreign tax in respect of the royalty income are to be aggregated accordingly.

(3) In this section "foreign jurisdiction" means a jurisdiction outside the United Kingdom.

48 Applying section 44(2): "portfolio" of transactions, arrangements or assets

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that transactions, arrangements or assets are treated by a taxpayer as a series or group ("the portfolio").

(3) Condition B is that credits for foreign tax arise in respect of the portfolio.

(4) Condition C is that—

(a) it is not reasonably practicable to prepare a separate calculation of income for the purposes of section 44(2) in respect of each transaction, arrangement or asset, or

(b) a separate calculation of income in respect of each transaction, arrangement or asset for the purposes of section 44(2) would not, compared with an aggregated calculation, make a material difference to the amount of credit for foreign tax which is allowable.

(5) The income arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 44(2) in a just and reasonable manner.

49 Restricting section 44(3) if company is a bank or connected with a bank

(1) Section 44(3) is subject to subsection (2) of this section if—

(a) the company is a bank or is connected with a bank, and

(b) the amount of the included funding costs is significantly less than the amount of the notional funding costs.

(2) The amount of the notional funding costs is to be included in the amount to be taken into account under section 44(3), but only so far as it exceeds the amount of the included funding costs.

(3) In this section—

"the company" means the company mentioned in section 44(3)(a),

"included funding costs" means the total of the funding costs that are—

(a) incurred by the company, or any company connected with the company, in respect of capital used to fund the relevant transaction, and

(b) included in the amount to be taken into account under section 44(3) before the application of subsection (2) of this section,

"notional funding costs" means the funding costs that the relevant bank would incur (on the basis of its average funding costs) in respect of the capital that would be needed to wholly fund the relevant transaction if that transaction were funded in that way,

"the relevant bank" means the bank that is the company, or with which the company is connected, and

"the relevant transaction" means the transaction, arrangement or asset from which the income mentioned in section 44(1) arises.

(4) The following provisions apply for the purposes of this section—

section 1120 of CTA 2010 (meaning of "bank"), and

section 1122 of CTA 2010 (meaning of "connected").

Calculating tax for purposes of section 42(2)

50 Tax for period on loan relationships

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 299 of CTA 2009, is charged on TNTC, not on the non-trading profits that the company has for the period in respect of its loan relationships.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships), and

"TNTC" is the total amount of the company's non-trading credits for the period.

51 Tax for period on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42(2) if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) Assume that the charge to corporation tax on income, as applied by section 752 of CTA 2009, is charged on TNTC, not on the non-trading gains arising to the company in the period on intangible fixed assets.

(3) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"TNTC" is the total amount of the company's non-trading credits for the period.

Allocation of deductions etc to profits for purposes of section 42

52 General deductions

(1) Subsection (2) applies for the purposes of section 42 if in the accounting period there is any amount ("the deduction") that for corporation tax purposes is deductible from, or otherwise allowable against, profits of more than one description.

(2) The company may allocate the deduction in such amounts, and to such of its profits for the period, as it thinks fit.

53 Earlier years' non-trading deficits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if an amount ("the deficit") is carried forward to the period under section 457(1) of CTA 2009 (non-trading deficits on loan relationships set against profits of subsequent years).

(2) The deficit can be allocated only to the company's non-trading profits for the period, but the company may allocate the deficit to such of those profits, and in such amounts, as the company thinks fit.

(3) In this section "non-trading profits" has the meaning given by section 457(5) of CTA 2009.

54 Non-trading debits on loan relationships

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - (CB + CF + GR)$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit, but this is subject to subsection (4).

(3) Subsection (4) applies for the purposes of section 42 if—

(a) the company has at least one non-trading credit for the period that is eligible for double taxation relief, and

(b) the company sets the whole or part of XS against profits of the period in pursuance of a current-year provision or claim.

(4) So much of the company's non-trading debits as is equal to that amount of XS must be allocated to the profits against which that amount of XS is set in pursuance of the current-year provision or claim.

(5) In this section, if the company has a non-trading deficit ("D") on its loan relationships for the period—

CB is so much of D as is the subject of a carry-back claim,

CF is so much of D as is carried forward to a subsequent accounting period in accordance with a carry-forward provision,

GR is so much of D as is surrendered as group relief under section 99 of CTA 2010, and

if

$$D > CB + CF + GR$$

then XS is so much of D as is given by the formula—

$$D - (CB + CF + GR)$$

(6) For the purposes of subsections (1) and (3), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(7) In this section—

"carry-back claim" means a claim—

(a) under section 389(1) of CTA 2009 (insurance companies: carry-back, to earlier accounting periods, of non-trading deficit on loan relationships), or

(b) under section 459(1)(b) of CTA 2009 (carry-back: other companies),

"carry-forward provision" means—

(a) section 391 of CTA 2009 (insurance companies), or

(b) section 457(1) of CTA 2009 (other companies),

"current-year provision or claim" means—

(a) section 388(1) of CTA 2009 (insurance companies: non-trading deficit on loan relationships set against current year's profits), or

(b) a claim under section 459(1)(a) of CTA 2009 (other companies: setting of deficit against current year's profits),

"non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships),

"non-trading debit" means a non-trading debit for the purposes of that Part, and

"TNTD" is the total amount of the company's non-trading debits for the period.

55 Current year's non-trading deficits on loan relationships

(1) Subsection (5) applies for the purposes of section 42 if conditions A and B are met.

(2) Condition A is that the company—

(a) has no non-trading credits for the period, or

(b) has non-trading credits for the period but none of those credits is eligible for double taxation relief.

(3) For the purposes of subsection (2)(b), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(4) Condition B is that an amount ("the deficit") is set against any of the company's profits for the period—

(a) under section 388(1) of CTA 2009 (insurance company's non-trading deficit on loan relationships set against current year's profits), or

(b) under section 459(1)(a) of CTA 2009 (other company's non-trading deficit on loan relationships set against current year's profits).

(5) The deficit can be allocated only to profits against which the deficit is set under section 388(1) or 459(1)(a) of CTA 2009.

(6) In this section "non-trading credit" means a non-trading credit for the purposes of Part 5 of CTA 2009 (loan relationships).

56 Non-trading debits on intangible fixed assets

(1) Subsection (2) applies for the purposes of section 42 if the company has at least one non-trading credit for the period that is eligible for double taxation relief.

(2) That much of the company's non-trading debits for the period as is given by the formula—

$$TNTD - CF$$

may be allocated by the company to such of its profits for the period, and in such amounts, as the company thinks fit.

(3) In subsection (2)—

TNTD is the total amount of the company's non-trading debits for the period, and

CF is the amount (if any) carried forward to the next accounting period under section 753(3) of CTA 2009 (carry forward of non-trading loss so far as neither subject to a claim to set it against profits of current period nor surrendered by way of group relief).

(4) For the purposes of subsection (1), a non-trading credit relating to an item is "eligible for double taxation relief" if there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax calculated by reference to that item.

(5) In this section—

"non-trading credit" means a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means a non-trading debit for the purposes of that Part.

Taking account of foreign tax underlying dividends

57 Credit in respect of dividend: taking account of underlying tax

(1) Subsections (2) and (3) apply if, as a result of provision made by the arrangements, underlying tax is to be taken into account in considering whether any and (if so) what credit is to be allowed against corporation tax, income tax or capital gains tax in respect of a dividend.

(2) The amount of underlying tax to be taken into account as a result of the provision is to be calculated—

(a) under section 58 if the dividend is one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(b) under section 61 if the dividend is not one paid by a company resident outside the United Kingdom to a company resident in the United Kingdom.

(3) No underlying tax is to be taken into account as a result of the provision if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of the territory in respect of an amount determined by reference to the dividend.

(4) See also—

(a) section 63 (underlying tax paid in the United Kingdom, or otherwise outside the non-UK territory, treated in some cases as underlying tax paid in the non-UK territory), and

(b) section 65 (underlying tax paid in respect of profits of a company which pays a dividend treated in some cases as underlying tax paid in respect of profits of company to which dividend is paid).

58 Calculation if dividend paid by non-resident company to resident company

(1) A calculation under this section (see section 57(2)(a)) is as follows—

Step 1

Calculate the amount of the foreign tax borne on the relevant profits by the company paying the dividend.

Step 2

Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3

Calculate the amount given by—

$$(D + PA) \times M$$

where—

D is the amount of the dividend,

PA is the amount given by the calculation at Step 2, and

M is the rate of corporation tax applicable to profits of the recipient for the accounting period in which the dividend is received or, if there is more than one such rate, the average rate over the whole of that accounting period.

Step 4

If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

(a) set off against the recipient's own tax under that law, or

(b) paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 5

If the amount given by the calculation at Step 2 is less than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 4.

Step 6

If the amount given by the calculation at Step 2 is equal to or more than the amount given by the calculation at Step 3, UT is the amount given by the calculation at Step 3 but reduced by any amount calculated at Step 4.

(2) In this section "UT" means the amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1).

59 Meaning of "relevant profits" in section 58

(1) This section applies for the purposes of section 58.

(2) "Relevant profits", if the dividend is within subsection (3), means the profits in respect of which the dividend is treated as paid for the purposes of section 931H of CTA 2009 (dividends derived from transactions not designed to reduce tax).

(3) A dividend is within this subsection if—

(a) it is received in an accounting period of the recipient in which the recipient is not a small company for the purposes of Part 9A of CTA 2009 (company distributions: see section 931S of that Act), and

(b) for the purposes of section 931H of that Act, it is treated as paid in respect of profits other than relevant profits (see subsection (4) of that section).

(4) "Relevant profits", if the dividend is not within subsection (3) but is paid for a specified period, means—

(a) the distributable profits of that period, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(5) "Relevant profits", if the dividend is not within subsection (3) and is not paid for a specified period, means—

(a) the distributable profits of the last period for which accounts of the company were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds those profits, so much of the distributable profits of preceding periods as is equal to the excess.

(6) In subsection (4)(b) or (5)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of section 58, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(7) For the purposes of subsection (4)(b) or (5)(b), the profits of the most recent preceding period are to be taken into account first, then the profits of the next most recent preceding period, and so on.

(8) In this section "distributable profits", in relation to a company, means the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the country or territory under whose law the company is incorporated or formed, and

(b) making no provision for reserves, bad debts, impairment losses or contingencies other than such as is required to be made under the law of that country or territory.

(9) The reference in subsection (6)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

60 Underlying tax to be left out of account on claim to that effect

(1) Subsection (2) applies if—

(a) under the arrangements a company resident in the United Kingdom makes a claim for an allowance by way of credit in accordance with this Chapter, and

(b) the claim relates to a dividend paid to the company by a company resident outside the United Kingdom.

(2) The claim may be framed so as to exclude amounts of underlying tax specified for the purpose in the claim.

(3) Any amounts of underlying tax so excluded are to be left out of account for the purposes of section 57.

61 Calculation if section 58 does not apply

A calculation under this section (see section 57(2)(b)) is as follows—

Step 1

Calculate the amount of the foreign tax borne on the relevant profits by the body corporate paying the dividend.

Step 2

Calculate how much of that amount is properly attributable to the proportion of the relevant profits represented by the dividend.

Step 3

If under the law of the non-UK territory the dividend has been increased for tax purposes by an amount to be—

set off against the recipient's own tax under that law, or

paid to the recipient so far as it exceeds the recipient's own tax under that law,

calculate the amount of the increase.

Step 4

The amount of underlying tax to be taken into account as a result of the provision mentioned in section 57(1) is the amount given by the calculation at Step 2 but reduced by any amount calculated at Step 3.

62 Meaning of "relevant profits" in section 61

(1) This section applies for the purposes of section 61.

(2) "Relevant profits", if the dividend is paid for a specified period, means—

(a) the profits of that period, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(3) "Relevant profits", if the dividend is not paid for a specified period but is paid out of specified profits, means those profits.

(4) "Relevant profits", if the dividend is paid neither for a specified period nor out of specified profits, means—

(a) the profits of the last period for which accounts of the body corporate paying the dividend were made up which ended before the dividend became payable, plus

(b) if the total dividend exceeds the distributable profits of that period, so much of the distributable profits of preceding periods as is equal to the excess.

(5) In subsection (2)(b) or (4)(b), the reference to distributable profits of preceding periods does not include—

(a) profits previously distributed, or

(b) profits previously treated as relevant profits for the purposes of section 61, section 799 of ICTA or section 506 of the Income and Corporation Taxes Act 1970.

(6) For the purposes of subsection (2)(b) or (4)(b), the profits of the most recent preceding period are first to be taken into account, then the profits of the next most recent preceding period, and so on.

(7) In this section "distributable profits", in relation to a period, means profits available for distribution of the period.

(8) The reference in subsection (5)(b) to section 799 of ICTA is without prejudice to the generality of paragraph 4(1) of Schedule 9 (references to rewritten provisions include references to superseded provisions).

Taking account of tax underlying dividends that is not foreign tax

63 Non-UK company dividend paid to 10% investor: relief for UK and other tax

(1) If condition A is met, and one of conditions B and C is met, subsection (5) applies for the purpose of allowing, under the arrangements, credit against corporation tax in respect of a dividend paid by a company resident outside the United Kingdom ("the overseas company") to another company ("the recipient company").

(2) Condition A is that the recipient company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the overseas company.

(3) Condition B is that the recipient company is resident in the United Kingdom.

(4) Condition C is that—

(a) the recipient company is resident outside the United Kingdom, but

(b) the dividend forms part of the profits of a permanent establishment of the recipient company in the United Kingdom.

(5) There is to be taken into account, as if it were tax payable under the law of the territory ("territory R") in which the overseas company is resident—

(a) any income tax or corporation tax payable by the overseas company in respect of its profits, and

(b) any tax which, under the law of any territory outside the United Kingdom other than territory R, is payable by the overseas company in respect of its profits.

(6) For the purposes of subsection (2), one company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

Tax underlying dividend treated as underlying tax paid by dividend's recipient

64 Meaning of "dividend-paying chain" of companies

(1) For the purposes of sections 65, 67 and 70 there is a dividend-paying chain if—

(a) condition A is met, and

(b) one of conditions B to D is met.

(2) Condition A is that a company ("the second company") pays a dividend to another company ("the first company").

(3) Condition B is that there is a third company which is a 10% associate of, and pays a dividend to, the second company.

(4) Condition C is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) a fourth company which is a 10% associate of, and pays a dividend to, the third company.

(5) Condition D is that there is a succession of companies consisting of—

(a) a third company which is a 10% associate of, and pays a dividend to, the second company, and

(b) two or more companies (the fourth and fifth companies, and so on) each of which is a 10% associate of, and pays a dividend to, the company above it in the succession.

(6) For the purposes of this section, a company ("X") is a 10% associate of another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X or at least 10% of the ordinary share capital of X.

(7) For the purposes of subsection (6), a company ("S") is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in S.

65 Relief for underlying tax paid by company lower in dividend-paying chain

(1) Subsection (4) applies if conditions E and F are met.

(2) Condition E is that there is a dividend-paying chain (see section 64) in which—

(a) the first company is the recipient company mentioned in section 63, and

(b) the second company is the overseas company mentioned in that section.

(3) Condition F is that there is underlying tax, payable by a company ("L") lower in the chain than the second company, that would be taken into account under this Part if—

(a) the dividend paid by L to the company ("K") above L in the chain had been paid—

(i) by a company resident outside the United Kingdom to a company resident in the United Kingdom, and

(ii) at the time when the dividend paid by the second company is received by the first company, and

(b) double taxation arrangements had provided for the underlying tax to be taken into account.

(4) The underlying tax is to be treated—

(a) for the purposes of section 63(5), and

(b) for the purposes of subsection (3),

as tax paid by K in respect of its profits, but see section 66 (limitations).

(5) In applying section 63 for the purpose of deciding whether condition F is met, read section 63(2) as if ", or at least 10% of the ordinary share capital of," were inserted after "at least 10% of the voting power in".

(6) Section 58 (first method of calculating amount of underlying tax to be taken into account) does not apply for the purposes of subsections (3) and (4) unless the company referred to in subsection (2)(a) is resident in the United Kingdom and, even if that company is resident in the United Kingdom, section 58 applies for those purposes only—

(a) if K and L are not resident in the same territory, or

(b) in such other cases as may be prescribed by regulations made by the Treasury.

(7) Section 61 (second method of calculation) applies for the purposes of subsections (3) and (4) if section 58 does not apply for those purposes.

66 Limitations on section 65(4)

(1) Section 65(4) is subject to the limitations set out in subsections (2) and (3).

(2) No tax is to be taken into account in respect of a dividend paid by a company resident in the United Kingdom except—

(a) corporation tax, and

(b) any tax for which the company is entitled to credit under this Part.

(3) No tax is to be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account, under the provisions of this Part other than section 65(4), had the other company been resident in the United Kingdom.

Tax underlying dividends: restriction of relief, and particular cases

67 Restriction of relief if underlying tax at rate higher than rate of corporation tax

(1) Subsection (6) applies if—

(a) conditions A and B are met, and

(b) one of conditions C and D is met.

(2) Condition A is that a company ("the claimant company") makes a claim for an allowance by way of credit in accordance with this Part.

(3) Condition B is that the claim relates to underlying tax on a dividend paid to the claimant company by a company resident outside the United Kingdom ("the overseas company").

(4) Condition C is that the underlying tax is, or includes, an amount in respect of tax payable at a high rate by the overseas company and—

(a) that amount would not be, or would not be included in, the underlying tax, or

(b) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(5) Condition D is that—

(a) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant company, and

(ii) the second company is the overseas company, and

(b) the underlying tax is, or includes, an amount in respect of tax payable at a high rate by a company lower in the chain than the overseas company and—

(i) that amount would not be, or would not be included in, the underlying tax, or

(ii) any part of that amount would not be included in the underlying tax,

but for the existence of, or but for there having been, an avoidance scheme (see section 68).

(6) The amount of credit to which the claimant company is entitled on the claim is to be determined as if the tax payable at a high rate had instead been tax at the relievable rate.

(7) For the purposes of this section, tax payable by a company is "tax payable at a high rate" so far as the amount payable exceeds the amount that would represent tax at the relievable rate on the profits of the company which, for the purposes of this Part, are taken to bear the payable tax.

(8) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (3) was paid.

68 Meaning of "avoidance scheme" in section 67

(1) In section 67 "avoidance scheme" means any scheme or arrangement in respect of which each of conditions A to C is met.

(2) Condition A is that the purpose, or one of the main purposes, of the scheme or arrangement is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

(3) Condition B is that the parties to the scheme or arrangement include—

(a) the company which is the claimant company for the purposes of section 67,

(b) a company related to the claimant company, or

(c) a person connected with the claimant company.

(4) Condition C is that the parties to the scheme or arrangement include a person who was not under the control of the claimant company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(5) For the purposes of subsection (3)(b), a company ("R") is related to the claimant company if the claimant company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in R.

(6) For the purposes of subsection (3)(c), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

(7) For the purposes of subsection (4), a person who is a party to a scheme or arrangement is to be taken to have been under the control of the claimant company at all the following times—

(a) any time when the claimant company would have been taken (in accordance with sections 450 and 451 of CTA 2010) to have had control of the person for the purposes of Part 10 of CTA 2010 (close companies),

(b) any time when the claimant company would have been so taken if sections 450 and 451 of CTA 2010 applied (with the necessary modifications) in the case of partnerships and unincorporated associations as they apply in the case of companies, and

(c) any time when the person acted in relation to the scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of the claimant company.

(8) For the purposes of subsection (5), the claimant company is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant company.

(9) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

69 Dividends paid out of transferred profits

(1) This section applies if—

(a) a company resident outside the United Kingdom ("company A") has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits,

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than as a result of the payment of a dividend to company B, and

(c) company B pays a dividend out of those profits to another company, wherever resident.

(2) If this section applies, this Part has effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b).

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom is not to exceed the amount which would have been allowable to that company had those profits become profits of company B as a result of the payment of a dividend by company A to company B.

70 Underlying tax reflecting interest on loans

(1) Subsection (2) applies if—

(a) a bank, or a company connected with a bank, makes a claim for an allowance by way of credit in accordance with this Chapter,

(b) there is a dividend-paying chain (see section 64) in which—

(i) the first company is the claimant, and

(ii) the second company is a company resident outside the United Kingdom,

(c) the claimant—

(i) controls directly or indirectly, or

(ii) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in the second company,

(d) the claim relates to underlying tax on a dividend paid by the second company,

(e) that underlying tax is, or includes, tax payable under the law of a territory outside the United Kingdom on, or by reference to, interest or dividends earned or received in the course of its business by a company ("the receiving company") which is—

(i) the second company, or

(ii) a company lower in the chain than the second company, and

(f) section 44 would have applied to the receiving company had it been resident in the United Kingdom.

(2) The amount of the credit for the tax mentioned in subsection (1)(e) ("the non-UK tax") is not to exceed the sum equal to corporation tax, at the rate in force at the time the non-UK tax was chargeable, on—

$$ID - E$$

where—

ID is the amount of the interest or dividends mentioned in subsection (1)(e), and

E is the amount of the receiving company's expenditure which is properly attributable to the earning of that interest or those dividends.

(3) For the purposes of subsection (1)(a)—

(a) "bank" means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and

(b) whether a company is connected with a bank is determined in accordance with section 1122 of CTA 2010.

(4) For the purposes of subsection (1)(c), the claimant is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in the claimant.

71 Foreign taxation of group as single entity

(1) Subsections (2) and (3) apply in relation to a claim for credit in respect of underlying tax in relation to a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom if, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in the territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of—

(a) that company and another company resident in the territory, or

(b) that company and two or more other companies resident in the territory,

taken together as a single taxable entity.

(2) This Part, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1)(a) or (b) (the "non-resident companies") to another company ("the payee company"), has effect as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the payee company if the company which actually pays the dividend is related to the payee company.

(3) In particular, this Part has effect as if—

(a) the relevant profits for the purposes of section 58 is a single aggregate figure in respect of that single company, and

(b) the tax paid in the territory by the responsible company is tax paid in the territory by that single company.

(4) For the purposes of this section, a company ("X") is related to another company ("H") if H—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10% of the voting power in X.

(5) For the purposes of subsection (4), H is a subsidiary of another company ("P") if P controls, directly or indirectly, at least 50% of the voting power in H.

Unrelieved foreign tax on profits of overseas permanent establishment

72 Application of section 73(1)

(1) Section 73(1) applies if, in an accounting period of a company resident in the United Kingdom—

(a) the amount of the credit for foreign tax which under the arrangements would, if section 42 were ignored, be allowable against corporation tax in respect of the company's qualifying income from an overseas permanent establishment, exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the company's qualifying income from that overseas permanent establishment.

(2) For the purposes of subsection (1) and section 73(1), the company's qualifying income from an overseas permanent establishment is the profits of the overseas permanent establishment which are—

(a) profits, chargeable under Chapter 2 of Part 3 of CTA 2009, of a trade carried on partly, but not wholly, outside the United Kingdom, or

(b) included in the profits of a gross roll-up business chargeable under section 436A of ICTA.

(3) In sections 73 to 78—

"the company" means the company mentioned in subsection (1),

"the excess" means the excess referred to in that subsection,

"the PE" means the overseas permanent establishment mentioned in that subsection, and

"period A" means the accounting period mentioned in that subsection.

73 Carry-forward and carry-back of unrelieved foreign tax

(1) For the purposes of allowing credit relief under this Part, the excess is to be treated—

(a) as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in the accounting period after period A (whether or not the company in fact has any qualifying income from that source in the accounting period after period A), or

(b) in accordance with the rules in section 74, as if it were foreign tax paid in respect of, and calculated by reference to, the company's qualifying income from the PE in one or more of the recent periods, or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(2) If in period A the company ceases to have the PE, the excess, so far as it is not treated as mentioned in subsection (1)(b), is to be reduced to nil (so that none of the excess is to be treated as mentioned in subsection (1)(a)).

(3) If an amount is treated as mentioned in subsection (1)(b) it is not to be so treated for the purpose of any further application of subsection (1).

(4) In subsection (1)(b) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

74 Rules for carrying back unrelieved foreign tax

(1) This section sets out the rules mentioned in section 73(1)(b).

(2) The first rule is that—

(a) credit for the excess, or for any remaining balance of the excess, is allowed against corporation tax in respect of a later recent period, before

(b) credit for any of the excess is allowed against corporation tax in respect of any earlier recent period.

(3) The second rule is that, before allowing credit for any of the excess against corporation tax in respect of income of any particular accounting period ("period P"), credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of period P, other than amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period other than period P, and

(b) then for amounts which are foreign tax as a result of applying section 73(1) to an excess from an accounting period before period P.

(4) In subsection (2) "recent period" means an accounting period which is earlier than period A but begins not more than 3 years before period A.

75 Two or more establishments treated as a single establishment

(1) Subsection (2) applies if, under the law of a territory outside the United Kingdom, tax is charged in respect of the profits of two or more overseas permanent establishments in that territory, taken together.

(2) For the purposes of the provisions of sections 72 to 78 other than the excepted provisions, those overseas permanent establishments are to be treated as if they together constituted a single overseas permanent establishment.

(3) In subsection (2) "the excepted provisions" means section 73(2), this section and section 77.

76 Former and subsequent establishments regarded as distinct establishments

(1) If the company—

(a) at any time ceases to have a particular overseas permanent establishment in a particular territory ("the old establishment"), but

(b) subsequently again has an overseas permanent establishment in that territory ("the new establishment"),

the old establishment and the new establishment are, for the purposes of the provisions of sections 72 to 78 other than the excepted provisions, to be regarded as different overseas permanent establishments.

(2) In subsection (1) "the excepted provisions" means sections 73(2), 75 and 77.

77 Claims for relief under section 73(1)

(1) The excess is to be treated as mentioned in section 73(1) only on a claim.

(2) A claim under subsection (1) must specify—

(a) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(a), and

(b) the amount (if any) of the excess which is to be treated as mentioned in section 73(1)(b).

(3) A claim under subsection (1) must be made not more than—

(a) 4 years after the end of period A, or

(b) if later, 1 year after the end of the accounting period in which the foreign tax concerned is paid.

78 Meaning of "overseas permanent establishment"

(1) For the purposes of sections 72 to 76 "overseas permanent establishment" means a permanent establishment through which the company carries on a trade in a territory outside the United Kingdom.

(2) In subsection (1) "permanent establishment"—

(a) if the arrangements are double taxation arrangements and define the expression, has the meaning given by the arrangements, and

(b) if the arrangements are double taxation arrangements but do not define the expression, or if the arrangements are unilateral relief arrangements for a territory outside the United Kingdom, is to be read in accordance with Chapter 2 of Part 24 of CTA 2010.

Action after adjustment of amount payable by way of UK or foreign tax

79 Time limits for action if tax adjustment makes credit excessive or insufficient

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any credit given under the arrangements is reduced under section 34, or becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any other territory,

(b) the reduction or adjustment gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) Nothing in—

(a) the Tax Acts, and

(b) the enactments relating to capital gains tax,

limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

80 Duty to give notice that adjustment has rendered credit excessive

(1) This section applies if—

(a) any credit for foreign tax has been allowed to a person under the arrangements,
(b) later, the amount of that credit is reduced under section 34, or becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom, and
(c) the reduction or adjustment is not a Lloyd's adjustment (see subsection (5)).

(2) The person must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.

(3) Notice under subsection (2) is to be given—
(a) to an officer of Revenue and Customs, and
(b) within one year from when the reduction or adjustment is made.

(4) If the person fails to comply with the requirements imposed by subsections (2) and (3), the person is liable to a penalty not greater than the amount by which the credit has been reduced or has become excessive as a result of the adjustment.

(5) For the purposes of subsection (1)(c), the reduction or adjustment is a "Lloyd's adjustment" if the consequences of the reduction or adjustment in relation to the credit are to be given effect in accordance with regulations under—
(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or
(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(6) In this section so far as it relates to capital gains tax "notice" means notice in writing.

Schemes and arrangements designed to increase relief: anti-avoidance

81 Giving a counteraction notice

(1) Subsection (2) applies if an officer of Revenue and Customs considers, on reasonable grounds, that each of conditions A to D of section 82 is or may be met in relation to a person.

(2) The officer may give the person a notice which—
(a) informs the person of the officer's view under subsection (1),
(b) specifies the chargeable period in relation to which the officer formed that view,
(c) specifies, if the amount of foreign tax considered by the officer to meet condition B of section 82 is an amount of underlying tax, the body corporate whose payment of foreign tax is relevant to that underlying tax, and
(d) informs the person that, as a result of the giving of the notice, section 90(2) will apply in relation to the person's tax return for the chargeable period specified if each of conditions A to D of section 82 is met in relation to that period.

(3) Section 92 (when notice may be given after tax return made) imposes limits on when the power under subsection (2) is exercisable.

(4) In this section "foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.

(5) In this section so far as it relates to capital gains tax—

"chargeable period" means tax year (see section 288(1ZA) of TCGA 1992), and

"notice" means notice in writing.

82 Conditions for the purposes of section 81(1)

(1) Conditions A to D are the conditions mentioned in section 81(1).

(2) Condition A is that, in respect of any income or chargeable gain—

(a) taken into account for the purposes of determining a person's liability to UK tax in a chargeable period, or

(b) to be taken into account for the purposes of determining a person's liability to UK tax in a chargeable period,

there is an amount of foreign tax for which, under the arrangements, credit is allowable against UK tax for the period.

(3) Condition B is that there is a scheme or arrangement the main purpose of which, or one of the main purposes of which, is to cause an amount of foreign tax to be taken into account in the person's case for the period.

(4) Condition C is that the scheme or arrangement is within section 83.

(5) Condition D is that T is more than a minimal amount, where T is the sum of—

(a) the total amount of the claims for credit that the person has made, or is in a position to make, for the period ("the counteraction period"), and

(b) the total amount of all connected-person claims.

(6) In subsection (5) "connected-person claim" means a claim that any person connected to the person has made, or is in a position to make, for any chargeable period that overlaps the counteraction period by at least one day.

(7) In this section—

"chargeable period", in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992),

"foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory, and

"UK tax" means income tax, corporation tax or capital gains tax.

(8) Section 286 of TCGA 1992 (meaning of "connected") applies for the purposes of subsection (6) so far as applying in relation to capital gains tax.

83 Schemes and arrangements referred to in section 82(4)

(1) For the purposes of section 82(4), a scheme or arrangement is within this section if it is within subsection (2) or (4).

(2) A scheme or arrangement is within this subsection if—

(a) it is not an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 apply to it.

(3) For the purposes of this section, a scheme or arrangement is an "underlying-tax" scheme or arrangement if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by an overseas-resident body corporate to be taken into account in a person's case.

(4) A scheme or arrangement is within this subsection if—

(a) it is an underlying-tax scheme or arrangement, and

(b) one or more of sections 84 to 88 would, on the assumption in subsection (5), apply to it.

(5) The assumption is that the body corporate is resident in the United Kingdom.

(6) Nothing in subsection (5) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

(7) In subsection (3) "overseas-resident" means resident in a territory outside the United Kingdom.

84 Section 83(2) and (4): schemes enabling attribution of foreign tax

(1) This section applies to a scheme or arrangement if—

(a) the scheme or arrangement enables a participant to pay, in respect of a source of income or chargeable gain, an amount of foreign tax, and

(b) all or part of that amount of foreign tax is properly attributable to another source of income or chargeable gain.

(2) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

85 Section 83(2) and (4): schemes about effect of paying foreign tax

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person ("C") who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.

(2) The condition is that—

(a) C pays an amount of foreign tax ("the FT amount"), and

(b) when C entered into the scheme or arrangement, it could reasonably be expected that the effect of the payment of the FT amount on the foreign-tax total would be to increase that total by less than amount X.

(3) In subsection (2)(b)—

"the foreign-tax total" means the amount found by—

(a) totalling the amounts of foreign tax paid or payable by the participants in respect of the transaction or transactions forming part of the scheme or arrangement, and

(b) taking into account any reliefs that arise to the participants, including any reliefs arising to any one or more of the participants as a consequence of the payment by C of the FT amount, and

"amount X" means the amount allowable to C as a credit in respect of the payment of the FT amount.

(4) In subsection (3)—

"participant" means a person who is party to, or concerned in, the scheme or arrangement, and

"reliefs" means reliefs, deductions, reductions or allowances against or in respect of any tax.

(5) In subsection (1) so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

86 Section 83(2) and (4): schemes about claims or elections etc

(1) This section applies to a scheme or arrangement if under the scheme or arrangement—

(a) a step is taken by a participant, or

(b) a step that could have been taken by a participant is not taken,

and that action or failure to act has the effect of increasing, or giving rise to, a claim by a participant for an allowance by way of credit under this Part.

(2) The steps mentioned in subsection (1) are steps that may be taken—

(a) under the law of any territory, or

(b) under double taxation arrangements made in relation to any territory.

(3) The steps mentioned in subsection (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances, and

(b) making elections for tax purposes.

(4) In subsection (1) "participant" means a person who is party to, or concerned in, the scheme or arrangement.

87 Section 83(2) and (4): schemes that would reduce a person's tax liability

(1) This section applies to a scheme or arrangement if, under the scheme or arrangement, the condition in subsection (2) is met in relation to a person who for a chargeable period has claimed, or is in a position to claim, any credit that under the arrangements is to be allowed for foreign tax.

(2) The condition is that amount A is less than amount B.

(3) Amount A is the amount of UK tax payable by the person in respect of income and chargeable gains arising in the chargeable period.

(4) Amount B is the amount of UK tax that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

(5) In this section "UK tax" means income tax, corporation tax and capital gains tax.

(6) In this section so far as it relates to capital gains tax "chargeable period" means tax year (see section 288(1ZA) of TCGA 1992).

88 Section 83(2) and (4): schemes involving tax-deductible payments

(1) This section applies to a scheme or arrangement if the scheme or arrangement includes—

(a) the making by a person ("P") of a relevant payment or payments, and

(b) the giving, in respect of the payment or payments, of qualifying consideration.

(2) For the purposes of subsection (1), a payment is a "relevant payment" if all or part of it may be brought into account—

(a) in calculating P's income for the purposes of income tax or corporation tax, or

(b) in calculating P's chargeable gains for the purposes of capital gains tax.

(3) For the purposes of subsection (1), consideration is "qualifying consideration" if—

(a) all or part of it consists of a payment made to P or a person connected with P, and

(b) tax is chargeable in respect of the payment under the law of a territory outside the United Kingdom.

(4) In this section "payment" includes a transfer of money's worth.

(5) For the purposes of this section, whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.

89 Contents of counteraction notice

(1) Subsections (2) and (3) apply if an officer of Revenue and Customs gives a person a counteraction notice.

(2) The notice may specify the adjustments that, in the view of the officer, section 90 requires the person to make.

(3) If the notice specifies under section 81(2)(c) a body corporate resident outside the United Kingdom, the adjustments specified may include treating the body as having paid, or being liable to pay, only so much foreign tax as would have been allowed to it as a credit if—

(a) it were resident in the United Kingdom, and

(b) a counteraction notice had been given to it as regards an amount of foreign tax.

(4) In this section "foreign tax" includes any tax which for the purpose of allowing credit under the arrangements against corporation tax is treated by section 63(5) as if it were tax payable under the law of the non-UK territory.

90 Consequences of counteraction notices

(1) If—

(a) a counteraction notice has been given to a person in respect of a chargeable period specified in the notice, and

(b) that chargeable period is a chargeable period in relation to which each of conditions A to D of section 82 is met,

subsection (2) applies to the person's tax return for the period.

(2) The person must in the return make, or must amend the return so as to make, such adjustments as are necessary for counteracting the effects of the scheme or

arrangement in that period that are referable to the purpose referred to in condition B of section 82.

91 Counteraction notices given before tax return made

(1) Subsection (2) applies if—

(a) an officer of Revenue and Customs gives a counteraction notice to a person before the person has made the person's tax return for the chargeable period specified in the notice, and

(b) the person makes a tax return for that period before the end of the 90 days beginning with the day on which the notice is given.

(2) The person may—

(a) make a tax return that disregards the notice, and

(b) at any time after making the return and before the end of the 90 days, amend the return for the purpose of complying with the provision referred to in the notice.

(3) Subsection (2)(b) does not prevent the return becoming incorrect if the return—

(a) is not amended in accordance with subsection (2)(b) for the purpose of complying with the provision referred to in the notice, but

(b) ought to have been so amended.

92 Counteraction notices given after tax return made

(1) This section applies if—

(a) a person has made a tax return for a chargeable period, and

(b) ignoring the restrictions imposed by this section, an officer of Revenue and Customs has power to give the person a counteraction notice in relation to the period.

(2) The officer may give the person a counteraction notice in relation to the period only if a notice of enquiry has been given to the person in respect of the return.

(3) After any enquiries into the return have been completed, the officer may give the person a counteraction notice in relation to the period only if conditions E and F are met.

(4) Condition E is that, at the time the enquiries were completed, no officer of Revenue and Customs could have been reasonably expected, on the basis of the information made available to Her Majesty's Revenue and Customs before that time, to have been aware that the circumstances were such that a counteraction notice could have been given to the person in relation to the period.

(5) Condition F is that—

(a) the person was requested to provide information during an enquiry into the return, and

(b) if the person had duly complied with the request, an officer of Revenue and Customs could have been reasonably expected to give the person a counteraction notice in relation to the period.

(6) Section 94 sets out the circumstances in which, for the purposes of condition E, information is made available.

93 Amendment, closure notices and discovery assessments in section 92 cases

(1) This section applies if a person is given a counteraction notice in relation to a chargeable period after having made a tax return for the period.

(2) The person may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the 90 days beginning with the day on which the notice is given.

(3) If the counteraction notice is given after the person has been given a notice of enquiry in relation to the return, no closure notice may be given in relation to the return before the deadline.

(4) If the counteraction notice is given after any enquiries into the return are completed, no discovery assessment may be made as regards the income or chargeable gain to which the counteraction notice relates before the deadline.

(5) In subsections (3) and (4) "the deadline" means—

(a) the end of the 90 days beginning with the day on which the counteraction notice is given, or

(b) if earlier, the amendment of the return for the purpose of complying with the provision referred to in the counteraction notice.

(6) Subsection (2) does not prevent the return becoming incorrect if the return—

(a) is not amended in accordance with subsection (2) for the purpose of complying with the provision referred to in the counteraction notice, but

(b) ought to have been so amended.

94 Information made available for the purposes of section 92(4)

(1) This section applies for the purposes of section 92(4), and in this section—

"the period",

"the person", and

"the return",

mean (respectively) the chargeable period, the person and the tax return mentioned in section 92(1).

(2) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 (personal or trustee's return) and the information—

(a) is contained in the return,

(b) is contained in the person's return under that section for either of the two immediately preceding tax years,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(3) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 of TMA 1970 (personal return), the person carries on a trade, profession or business in partnership and the information—

(a) is contained in a return under section 12AA of TMA 1970 (partnership return) with respect to the partnership for the period,

(b) is contained in a return under section 12AA of TMA 1970 with respect to the partnership for either of the two immediately preceding tax years,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(4) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—

(a) is contained in the return,

(b) is contained in the person's company tax return for either of the two immediately preceding accounting periods,

(c) is contained in documents accompanying a return within paragraph (a) or (b), or

(d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into a return within paragraph (a) or (b).

(5) Information is made available to Her Majesty's Revenue and Customs if the return is under section 8 or 8A of TMA 1970 and the information —

(a) is contained in any claim made as regards the period by, or on behalf of, the person acting in the same capacity as that in which the person made the return,

(b) is contained in any documents accompanying such a claim, or

(c) is, or is contained in documents which are, produced or provided by or on behalf of the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim.

(6) Information is made available to Her Majesty's Revenue and Customs if the return is a company tax return and the information—

(a) is contained in a claim made by or on behalf of the person as regards the period,

(b) is contained in an application under section 751A of ICTA (applications relating to controlled foreign companies) made by or on behalf of the person which affects the return,

(c) is contained in any documents accompanying such a claim or application, or

(d) is, or is contained in documents which are, produced or provided by the person to an officer of Revenue and Customs for the purposes of any enquiries into such a claim or application.

(7) Information is made available to Her Majesty's Revenue and Customs if the existence of the information, and the relevance of the information as regards exercise of power to give the person a counteraction notice in relation to the period—

(a) could reasonably be expected to be inferred by an officer of Revenue and Customs from information falling within subsections (2) to (6), or

(b) are notified in writing by or on behalf of the person to an officer of Revenue and Customs.

95 Interpretation of sections 89 to 94

(1) This section applies for the purposes of sections 89 to 94, and subsection (4) applies also for the purposes of subsection (8).

(2) "Chargeable period", in relation to capital gains tax, means tax year (see section 288(1ZA) of TCGA 1992).

(3) "Closure notice" means a notice under—

(a) section 28A or 28B of TMA 1970 (completion of enquiry into personal, trustee's or partnership return), or

(b) paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry into company return).

(4) "Company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule (company returns).

(5) "Counteraction notice" means a notice under section 81(2).

(6) "Discovery assessment" means an assessment under—

(a) section 29 of TMA 1970 (assessment to income tax or capital gains tax), or

(b) paragraph 41 of Schedule 18 to FA 1998 (assessment on company).

(7) "Notice of enquiry" means a notice under—

(a) section 9A or 12AC of TMA 1970 (enquiry into personal, trustee's or partnership return), or

(b) paragraph 24 of Schedule 18 to FA 1998 (enquiry into company return).

(8) "Tax return" means—

(a) a return under section 8, 8A or 12AA of TMA 1970 (personal return, trustee's return or partnership return), or

(b) a company tax return.

Insurance companies

96 Companies with overseas branches: restriction of credit

(1) Subsection (4) applies if credit for foreign tax—

(a) which is payable in respect of insurance business carried on by a company through a permanent establishment in the non-UK territory, and

(b) which is calculated otherwise than wholly by reference to profits arising in the non-UK territory,

is to be allowed (in accordance with this Part) against corporation tax charged under section 35 of CTA 2009 or section 436A of ICTA in respect of the profits, calculated in accordance with the provisions applicable for the purposes of section 35 of CTA 2009, of life assurance business or gross roll-up business carried on by the company in an accounting period (in this section called "the relevant UK-taxable profits").

(2) For the purposes of subsection (1)(b), the cases in which foreign tax is "calculated otherwise than wholly by reference to profits arising in the non-UK territory" are those cases in which the charge to tax in the non-UK territory is within subsection (3).

(3) A charge to tax is within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in calculating the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.

(4) If this subsection applies, the amount of the credit is not to exceed the greater of—

(a) any such part of the foreign tax as is charged by reference to profits arising in the non-UK territory, and

(b) the shareholders' share of the foreign tax.

(5) For the purposes of subsection (4), the shareholders' share of the foreign tax is so much of that tax as is represented by the fraction—

$$\frac{A}{B}$$

where—

A is an amount equal to the amount of the relevant UK-taxable profits before making any deduction authorised by subsection (7), and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in calculating those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amount taken into account as expenses in calculating those profits.

(6) If there is no such excess, or if the profits are greater than any excess, the whole of the foreign tax is the shareholders' share; and, subject to that, if there are no profits, none of the foreign tax is the shareholders' share.

(7) If, by virtue of this section, the credit for any foreign tax is less than it otherwise would be, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the relevant UK-taxable profits.

97 Companies with more than one category of business: restriction of credit

(1) Subsection (2) has effect if—

(a) an insurance company carries on more than one category of long-term business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax is to be allowed under the arrangements.

(2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E of ICTA) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section and with the provisions of section 98, is attributable to that category of business.

(3) If the relevant income arises from an asset which is linked solely to a category of business, the whole of the foreign tax is attributable to that category of business, unless section 98(3) applies.

(4) If the relevant income arises from foreign business assets, the whole of the foreign tax is attributable to gross roll-up business, unless section 98(3) applies.

(5) If subsection (3) does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) PHI business,

the fraction of the foreign tax that is attributable to that category of business is the fraction given by—

$$\frac{\text{The referable part of the relevant income}}{\text{The whole of the relevant income}}$$

where "the referable part" of the relevant income is the part of the relevant income which is referable to that category of business by virtue of any provision of section 432A of ICTA.

(6) Section 98(2) and (3) apply if the category of business in question is gross roll-up business.

(7) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (6) and section 98(2) and (3).

(8) If under this section or section 98(2) and (3) an amount of foreign tax is for the purposes of this section attributable to gross roll-up business, credit in respect of the foreign tax so attributable is allowed only against corporation tax in respect of profits charged under section 436A of ICTA (charge on profits from gross roll-up business).

98 Attribution for section 97 purposes if category is gross roll-up business

(1) Subsections (2) and (3) apply for the purposes of section 97 in accordance with section 97(6), and in this section "the relevant income" has the meaning given by section 97(1).

(2) If—

(a) section 97(3) does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of FA 1989 in an account in relation to which the provisions of section 432C of ICTA apply,

the fraction of the foreign tax that is attributable to gross roll-up business is the fraction given by—

$$\frac{\text{The referable part of the relevant income}}{\text{The whole of the relevant income}}$$

where "the referable part" of the relevant income is the part of the relevant income which is referable to gross roll-up business by virtue of any provision of section 432C of ICTA.

(3) If some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of FA 1989 the amount referred to in section 432E(1) of ICTA as the net amount, the fraction of the foreign tax that is attributable to gross roll-up business is the fraction given by—

$$\frac{\text{The referable part of INV}}{\text{The whole of INV}}$$

where—

"INV" is the investment income taken into account in that determination, and

"the referable part" of INV is the part of INV which would be referable to gross roll-up business by virtue of section 432E of ICTA if INV were the only amount included in the net amount.

(4) The Treasury may by regulations amend subsection (3); and the regulations may include amendments having effect in accounting periods during which they are made.

99 Allocation of expenses etc in calculations under section 35 of CTA 2009

(1) Subsection (2) has effect if—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a calculation in accordance with the provisions applicable for the purposes of section 35 of CTA 2009 (charge on trade profits) falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax is to be allowed under the arrangements.

(2) The amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") is to be limited by treating the amount of the relevant income as reduced in accordance with sections 100 and 101.

(3) In determining the amount of credit for foreign tax which is to be allowed as mentioned in subsection (2), the relevant income is not to be reduced except in accordance with that subsection.

(4) If a 75% subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

(a) the purpose, or one of the main purposes, of the scheme or arrangement is to prevent or restrict the application of subsection (2) to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary is to be found by setting off against that item the amount of expenses that would be attributable to it under section 100(1) if that item had arisen directly to the insurance company.

(5) If the credit allowed for any foreign tax is, by virtue of subsection (2), less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the profits of the category of business concerned.

(6) If, by virtue of subsection (4), the credit allowed for any foreign tax is less than it would be apart from that subsection, section 31(2)(a) does not prevent a deduction being made for the difference in calculating the income of the 75% subsidiary.

(7) For the purposes of the operation of this section in relation to any income or gain in respect of which credit is to be allowed under the arrangements, the amount of

the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction of the foreign tax that is attributable to that category of business in accordance with sections 97 and 98.

100 First limitation for purposes of section 99(2)

(1) The first limitation for the purposes of section 99(2) is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(2) For the purposes of subsection (1), the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(3) In subsection (2) "the appropriate fraction" means the fraction given by—

$$\frac{RI}{TI}$$

where—

RI is the amount of the relevant income before any reduction in accordance with section 99(2), and

TI is the total income of the category of business concerned for the period of account in question, but if that would result in TI being nil, TI is instead the amount described in subsection (4).

(4) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

(5) Subsection (4) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).

(6) In this section "the relevant income" has the meaning given by section 99(2).

101 Second limitation for purposes of section 99(2)

(1) If—

(a) the amount of the relevant income after any reduction under section 100(1),

exceeds—

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant income as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

(2) In subsection (1) "the relevant fraction" means the fraction given by—

$$\frac{RI}{\text{The referable share of total relievable income and gains}}$$

where—

"RI" is the amount of the relevant income before any reduction in accordance with section 99(2), and

"the referable share of total relievable income and gains" is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax is to be allowed under any double taxation arrangements or under unilateral relief arrangements for any territory outside the United Kingdom,

as are referable to the category of business concerned (before any reduction in accordance with section 99(2)).

(3) In subsection (1), any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(4) Subsection (2) is to be read with section 104 (determining how much of any income or gain is referable to a category of business).

(5) In this section "the relevant income" has the meaning given by section 99(2).

102 Interpreting sections 99 to 101 for life assurance or gross roll-up business

(1) This section has effect for the interpretation of sections 99 to 101 if the category of business concerned—

(a) is life assurance business, or

(b) is gross roll-up business.

(2) The "total income" of the category of business concerned for the period of account in question is the amount (if any) by which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds—

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, as is referable to that category of business.

(3) If any amounts are to be brought into account in accordance with section 83 of FA 1989, the amounts that are referable to the category of business concerned are to be determined for the purposes of subsection (2) in accordance with sections 432B to 432G of ICTA.

(4) The "total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4), the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.

103 Interpreting sections 99 to 101 for other insurance business

(1) This section has effect for the interpretation of sections 99 to 101 if the category of business concerned—

(a) is not life assurance business, and

(b) is not gross roll-up business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3),

exceeds—

(b) the sum of the amounts specified in subsection (4).

(3) The amounts mentioned in subsection (2)(a) are—

(a) earned premiums, net of reinsurance,

(b) investment income and gains, and

(c) other technical income, net of reinsurance.

(4) The amounts mentioned in subsection (2)(b) are—

(a) acquisition costs,

(b) the change in deferred acquisition costs, and

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

unless that sum is a negative amount, in which case the total relevant expenses is to be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5), and

(b) in the provisions of section B of Part 1 of Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) which relate to the profit and loss account format (within the meaning of paragraph 1(1) and (2) of that Schedule),

have the same meaning in those paragraphs as they have in those provisions.

104 Interpreting sections 100 and 101: amounts referable to category of business

(1) This section applies for the purposes of the operation of sections 100 and 101 in relation to any income or gain in respect of which credit is to be allowed under any double taxation arrangements or under unilateral relief arrangements for a territory outside the United Kingdom.

(2) The amount of the income or gain that is referable to a category of insurance business is the same fraction of the income or gain as the fraction found under subsection (3).

(3) Apply sections 97 and 98 in relation to—

(a) that category of business,

(b) the income or gain, and

(c) the double taxation arrangements, or unilateral relief arrangements, mentioned in subsection (1),

in order to find the fraction of the foreign tax that is attributable to that category of business.

CHAPTER 3

MISCELLANEOUS PROVISIONS

Application of Part for capital gains tax purposes

105 Meaning of "chargeable gain"

In this Part so far as it relates to capital gains tax "chargeable gain" has the same meaning as in TCGA 1992 (see, in particular, section 15(2) of that Act).

106 Chapters 1 and 2 apply to capital gains tax separately from other taxes

(1) Subsection (2) applies if foreign gains tax may be brought into account under Chapters 1 and 2 so far as they apply for capital gains tax purposes.

(2) The foreign gains tax is not to be taken into account under those Chapters so far as they apply otherwise than for capital gains tax purposes.

(3) Subsection (2) applies whether or not relief in respect of the foreign gains tax is given under those Chapters so far as they apply for capital gains tax purposes.

(4) Foreign non-gains tax is not be taken into account under those Chapters so far as they apply for capital gains tax purposes.

(5) In this section—

"foreign gains tax" means any tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is of a similar character to capital gains tax, and

"foreign non-gains tax" means tax which—

(a) is imposed by the law of a territory outside the United Kingdom, and

(b) is not foreign gains tax.

When foreign tax disregarded in applying Part for corporation tax purposes

107 Disregard of foreign tax referable to derivative contract

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to so much of a notional interest payment as, on such an apportionment, is attributable to a time when the company is not a party to the derivative contract concerned.

(3) For the purposes of this section, a payment is a "notional interest payment" if—

(a) a derivative contract specifies—

(i) a notional principal amount,

(ii) a period, and

(iii) a rate of interest,

(b) the amount of the payment is determined (wholly or mainly) by applying a rate to the specified notional principal amount for the specified period, and

(c) the value of the rate is the same at all times as that of the specified rate of interest.

108 Disregard of foreign tax attributable to interest under a loan relationship

(1) In applying this Part for corporation tax purposes in relation to a company, disregard tax within subsection (2).

(2) Tax is within this subsection in relation to a company so far as the tax—

(a) is tax under the law of a territory outside the United Kingdom, and

(b) is attributable, on a just and reasonable apportionment, to interest accruing under a loan relationship at a time when the company is not a party to the relationship.

(3) Tax within subsection (2) is not to be disregarded under subsection (1) if the tax is also within section 109 or 110.

109 Repo cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial sale under or in accordance with any debtor repo relating to the relationship, and

(b) that time is in the period for which the repo has effect.

(2) In this section—

"debtor repo" has the meaning given by the repo-definition section,

"the initial sale", in relation to a debtor repo, means the sale mentioned in condition C in the repo-definition section, and

"the repo-definition section" means section 548 of CTA 2009.

(3) In this section, a reference to the period for which a debtor repo has effect is to the period from the making of the initial sale until the earlier of—

(a) the time when the subsequent purchase mentioned in condition D in the repo-definition section takes place, and

(b) the time when it becomes apparent that that subsequent purchase will not take place.

110 Stock-lending cases in which no disregard under section 108

(1) Tax attributable to interest accruing to a company under a loan relationship is within this section if—

(a) at the time when the interest accrues, the company has ceased to be a party to the relationship by reason of having made the initial transfer under or in accordance with any stock lending arrangement relating to that relationship, and

(b) that time is in the period for which the arrangement has effect.

(2) In this section—

"the initial transfer", in relation to a stock lending arrangement, means the transfer mentioned in section 263B(1)(a) of TCGA 1992, and

"stock lending arrangement" has the meaning given by section 263B of TCGA 1992.

(3) In this section, a reference to the period for which a stock lending arrangement has effect is to the period from the making of the initial transfer until the earlier of—

(a) the time when the transfer mentioned in section 263B(1)(b) of TCGA 1992 takes place, and

(b) the time when it becomes apparent that that transfer will not take place.

Special rules for discretionary trusts

111 When payment to beneficiary treated as arising from foreign source

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a payment is made by trustees of a settlement.

(3) Condition B is that income tax is treated under section 494 of ITA 2007 (treatment of discretionary payments by trustees) as having been paid in relation to the payment.

(4) Condition C is that the income arising under the settlement includes taxed overseas income.

(5) Condition D is that the trustees certify—

(a) that the payment is one made out of income consisting of, or including, taxed overseas income of an amount, and from a source, stated in the certificate, and

(b) that that amount of taxed overseas income arose to the trustees not earlier than 6 years before the end of the tax year in which the payment is made.

(6) The person to whom the payment is made may claim that the payment, up to the certified amount, is to be treated for the purposes of this Part as income received by the person—

(a) from the certified source, and

(b) in the tax year in which the payment is made.

(7) In this section "taxed overseas income", in relation to a settlement, means income in respect of which the trustees are entitled to credit under this Part for tax under the law of a territory outside the United Kingdom.

Deduction for foreign tax where no credit allowed

112 Deduction from income for foreign tax (instead of credit against UK tax)

(1) The amount of any income arising in any place outside the United Kingdom is reduced for the purposes of the Tax Acts—

(a) by any amount which has been paid in respect of non-UK tax on that income in the place where the income arose, or

(b) if subsection (2) applies, by the lesser amount mentioned in that subsection.

(2) This subsection applies if credit would, were it allowable in respect of the income, be reduced under section 39 (reduction by reference to accrued income losses) to the lesser amount given by section 39(5).

(3) If—

(a) income of any person ("P") is reduced under subsection (1) by an amount paid in respect of tax on that income in the place where the income arose, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to that tax,

the amount of P's income is increased by the amount of the payment.

(4) Subsection (1)—

(a) has effect subject to section 31(2)(a) (no deduction for foreign tax if credit allowed and UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(b) has effect subject to section 143(5) and (6) (no deduction for special withholding tax if UK tax calculated otherwise than by reference to the amount received in the United Kingdom),

(c) does not apply to income the tax on which is to be calculated by reference to the amount of income received in the United Kingdom, and

(d) does not require any income to be reduced by an amount of underlying tax which, under section 60(3), is to be left out of account for the purposes of section 57.

(5) Subsection (1) has effect for corporation tax purposes despite—

(a) section 464(1) of CTA 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act), and

(b) section 906(1) of that Act (matters to be brought into account in respect of intangible fixed assets only under Part 8 of that Act).

(6) In subsection (1) "non-UK tax" means tax under the law of a territory outside the United Kingdom.

(7) For the purposes of subsection (3), whether a person is connected with P is determined in accordance with section 1122 of CTA 2010.

113 Deduction from capital gain for foreign tax (instead of credit against UK tax)

(1) Subsection (2) applies to tax if it is—

(a) chargeable under the law of any territory outside the United Kingdom on the disposal of an asset, and

(b) borne by the person making the disposal.

(2) The tax is allowable as a deduction in the calculation of the gain.

(3) Subsection (2) is subject to—

(a) Chapters 1 and 2 so far as they apply for corporation tax purposes (see, in particular, section 31),

(b) Chapters 1 and 2 so far as they apply for capital gains tax purposes (see, in particular, section 31), and

(c) section 143 (which includes provision about taking account of special withholding tax when calculating a gain for capital gains tax purposes).

(4) In subsection (1) "asset" and "disposal" have the same meaning as in TCGA 1992 (see, in particular, section 21 and the following provisions of TCGA 1992).

114 Time limits for action if tax adjustment makes reduction too large or too small

(1) Subsection (2) applies to a claim or assessment if—

(a) the amount of any reduction under section 112(1) or 113(2) becomes excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the law of any territory outside the United Kingdom, or a person's income is increased under section 112(3),

(b) the adjustment or increase gives rise to the claim or assessment, and

(c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the United Kingdom or elsewhere.

(2) No time-limit rule applies to the assessment or claim.

(3) In subsection (1)(c) "material determination" means (as the case may be)—

(a) an assessment, adjustment, increase or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 112(1) or increase is to be made under section 112(3), or

(b) an assessment, adjustment or other determination that is material in determining whether any, and (if so) what, reduction is to be made under section 113(2).

(4) In subsection (2) "time-limit rule" means anything—

(a) in TMA 1970,

(b) in ICTA,

(c) in TCGA 1992, or

(d) in any other provision of the Tax Acts,

limiting the time for the making of assessments or limiting the time for the making of claims for relief.

115 Duty to give notice that adjustment has rendered reduction too large

(1) This section applies if—

(a) the amount of any of a person's income is reduced under section 112(1),

(b) that reduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom or an increase under section 112(3), and

(c) the adjustment or increase is not a Lloyd's adjustment.

(2) This section also applies if—

(a) a deduction is allowed under section 113(2) in the case of a person making a disposal, and

(b) that deduction ("the original reduction") later becomes excessive as a result of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom.

(3) The person must give notice that the original reduction has become excessive as a result of the making of an adjustment or increase.

(4) Notice under subsection (3) is to be given—

(a) to an officer of Revenue and Customs, and

(b) within one year from when the adjustment or increase was made.

(5) If the person fails to comply with the requirements imposed by subsections (3) and (4), the person is liable to a penalty not greater than the amount given by—

$$A - B$$

where—

A is the amount of tax payable by the person for the reduction period after giving effect to the reduction that ought to be made under section 112(1) or (as the case may be) under section 113(2), and

B is the amount that would have been the tax payable by the person for that period after giving effect instead to the original reduction.

(6) In subsection (5) "the reduction period" means the tax year, or accounting period of a company for corporation tax purposes, for which the original reduction was made.

(7) For the purposes of subsection (1)(c), the adjustment or increase is a "Lloyd's adjustment" if the consequences of the adjustment or increase in relation to the reduction are to be given effect in accordance with regulations under—

(a) section 182(1) of FA 1993 (regulations about individual members of Lloyd's), or

(b) section 229 of FA 1994 (regulations relating to corporate members of Lloyd's).

(8) In subsection (2) "disposal" has the same meaning as in TCGA 1992 (see, in particular, section 21(2) and the following provisions of TCGA 1992).

(9) In this section so far as it relates to capital gains tax "notice" means notice in writing.

European cross-border transfers of business

116 Introduction to section 117

(1) Subject to subsections (4) to (6), section 117 applies if condition A or B is met.

(2) Condition A is that—

(a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and

(b) the transfer includes—

(i) the transfer of an asset or liability representing a loan relationship,

(ii) the transfer of rights and liabilities under a derivative contract, or

(iii) the transfer of intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes.

(3) Condition B is that—

(a) a company resident in the United Kingdom transfers part of its business to one or more companies,

(b) the part of the transferor's business which is transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,

(c) at least one transferee is resident in a member State other than the United Kingdom,

(d) the transferor continues to carry on a business after the transfer,

(e) the condition in subsection (2)(b) is met, and

(f) the transfer—

(i) is made in exchange for the issue of shares in or debentures of each transferee to each person holding shares in or debentures of the transferor, or

(ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(4) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(i), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor, and

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one.

(5) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(ii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if each transferee is resident in a member State, but not necessarily the same one, and

(c) only applies as respects the transfer so mentioned if the transferor makes a claim under this section in respect of it.

(6) If a transfer that meets condition A or B includes such a transfer as is mentioned in subsection (2)(b)(iii), section 117—

(a) only applies as respects the transfer so mentioned as a result of the transfer meeting condition A if—

(i) the companies mentioned in subsection (2)(a) are companies incorporated under the law of a member State, and

(ii) the transfer is wholly or partly in exchange for shares or other securities issued by the transferee to the transferor,

(b) only applies as respects the transfer so mentioned as a result of the transfer meeting condition B if—

(i) the transferor and at least one of the transferees mentioned in subsection (3)(a) is a company so incorporated, and

(ii) the transfer is in exchange for shares or debentures issued by the transferee to the persons holding shares in or debentures of the transferor, and

(c) only applies as respects the transfer so mentioned if—

(i) the transfer includes the whole of the assets of the transferor used for the purposes of the business or part, or the whole of those assets other than cash, and

(ii) the transferor makes a claim under this section in respect of the transfer so mentioned.

(7) No claim may be made under subsection (6) in respect of a transfer in relation to which a claim is made under section 827 of CTA 2009 (claims to postpone charge on transfer of assets to non-UK resident company).

(8) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

117 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on the transfer mentioned in section 116(2)(b)(i), (ii) or (iii) are set against gains arising on that transfer, and

(b) that any relief due to the transferor under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the transfer of business mentioned in section 116(2)(a) or (3)(a) is not effected for genuine commercial reasons, or

(b) that transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the transfer—

(a) the appropriate applicant has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the appropriate applicant that they are satisfied subsection (3) will not have that effect.

(5) In subsection (4) "the appropriate applicant" means—

(a) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(i) or (ii) is concerned, the companies mentioned in section 116(2)(a) or (3)(a), and

(b) in a case where tax chargeable in respect of such a transfer as is mentioned in section 116(2)(b)(iii) is concerned, the transferor.

(6) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

European cross-border mergers

118 Introduction to section 119

(1) Section 119 applies if each of conditions A to E is met and—

(a) in the case of a merger within subsection (2)(a) or (b), condition F is met,

(b) in the case of a merger within subsection (2)(c), conditions F and G are met, and

(c) in the case of a merger within subsection (2)(d), condition G is met.

(2) Condition A is that—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No. 2157/2001 on the Statute for a European company (Societas Europaea),

(b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Co-operative Society (SCE),

(c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) a merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(3) Condition B is that each merging company is resident in a member State.

(4) Condition C is that the merging companies are not all resident in the same State.

(5) Condition D is that in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State all assets and liabilities relating to a business which company A carried on in a member

State other than the United Kingdom through a permanent establishment (but see subsection (9)).

(6) Condition E is that the transfer mentioned in subsection (5) includes—

(a) the transfer of an asset or liability representing a loan relationship,

(b) the transfer of rights and liabilities under a derivative contract, or

(c) the transfer of intangible fixed assets—

(i) that are chargeable intangible assets in relation to company A immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.

(7) Condition F is that—

(a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or

(b) paragraph (a) is not met in relation to the transfer of those assets and liabilities only because, and only so far as, the transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

(8) Condition G is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).

(9) In the case of a merger within subsection (2)(a) or (b), in determining whether section 119 applies in respect of such a transfer as is mentioned in subsection (6)(c), condition D is regarded as met even if all liabilities relating to the business which company A carried on are not transferred as mentioned in subsection (5).

(10) For the purposes of this section, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(11) In this section—

"co-operative society" means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,

"SE" and "SCE" have the same meaning as in CTA 2009 (see section 1319 of that Act),

"the transferee" means—

(a) in relation to a merger within subsection (2)(a), the SE,

(b) in relation to a merger within subsection (2)(b), the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), the company to which assets and liabilities are transferred, and

"transferor" means—

(a) in relation to a merger within subsection (2)(a), a company merging to form the SE,

(b) in relation to a merger within subsection (2)(b), a co-operative society merging to form the SCE, and

(c) in relation to a merger within subsection (2)(c) or (d), a company transferring all of its assets and liabilities.

119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets

(1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and

(b) that any relief due to company A under that law is claimed.

(3) Subsection (1) does not apply if—

(a) the merger is not effected for genuine commercial reasons, or

(b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(4) But subsection (3) does not prevent subsection (1) from applying if before the merger—

(a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and

(b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.

(5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.

(6) In this section "company A", "the merger" and "the merging companies" have the same meaning as in section 118.

Transparent entities involved in cross-border transfers and mergers

120 Introduction to section 121

(1) Section 121 applies if, as a result of—

(a) a relevant loan relationship transaction,

(b) a relevant derivative contracts transaction, or

(c) a relevant intangible fixed assets transaction,

tax would have been chargeable under the law of a member State other than the United Kingdom in respect of a relevant profit but for the Mergers Directive.

(2) In this section "relevant loan relationship transaction" means—

(a) a transfer of a kind which meets condition A or B in section 421 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 421(3)(c) or (4)(f) of that Act were met,

and in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger of a kind mentioned in section 431(2) of that Act which meets—

(i) conditions B to D in section 431,

(ii) in the case of a merger within section 431(3)(a), (b) or (c), condition E in section 431, and

(iii) in the case of a merger within section 431(3)(c) or (d), condition F in section 431,

and in relation to which one or more of the merging companies is a transparent entity.

(3) In this section "relevant derivative contracts transaction" means—

(a) a transfer of a kind which meets condition A or B in section 674 of CTA 2009 or would meet one of those conditions if—

(i) the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) the condition in section 674(2)(c) or (3)(f) of that Act were met,

and in relation to which the transferor is a transparent entity, or

(b) a merger of a kind mentioned in section 682(2) of that Act which meets—

(i) conditions B to D in section 682,

(ii) in the case of a merger within section 682(2)(a), (b) or (c), condition E in section 682, and

(iii) in the case of a merger within section 682(2)(c) or (d), condition F in section 682,

and in relation to which one or more of the merging companies is a transparent entity.

(4) In this section "relevant intangible fixed assets transaction" means—

(a) a transfer—

(i) which is of a kind which meets condition A or B in section 819 of CTA 2009, or would meet one of those conditions if the business or part of the business transferred were carried on by the transferor in the United Kingdom, and

(ii) in relation to which the transferor or transferee or one of the transferees is a transparent entity, or

(b) a merger—

(i) which is of a kind mentioned in section 821(2) of that Act,

(ii) which meets conditions B and C in section 821,

(iii) which, if it is a merger within section 821(2)(a), (b) or (c), meets condition D in section 821,

(iv) which, if it is a merger within section 821(2)(c) or (d), meets condition E in section 821,

(v) in the course of which no qualifying assets are transferred to which section 818 of that Act (company reconstruction involving transfer of business) applies, and

(vi) in relation to which one or more of the merging companies is a transparent entity.

(5) In this section "relevant profit" means—

(a) in the case of a transfer within subsection (2)(a), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to the transferee,

(b) in the case of a merger within subsection (2)(b), a profit accruing to a transparent entity in respect of a loan relationship (or which would be treated as accruing if it were not transparent) because of the transfer of assets or liabilities representing a loan relationship by the transparent entity to another company in the course of the merger,

(c) in the case of a transfer within subsection (3)(a), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to the transferee,

(d) in the case of a merger within subsection (3)(b), a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing if it were not transparent) because of the transfer of rights and liabilities under the derivative contract by the transparent entity to another company in the course of the merger,

(e) in the case of a transfer within subsection (4)(a), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity, if it were not transparent, and

(f) in the case of a merger within subsection (4)(b), a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset, because of the transfer of intangible fixed assets by the transparent entity in the course of the merger, if it were not transparent.

(6) In this section "transparent entity" means a company which is resident in a member State other than the United Kingdom and does not have an ordinary share capital.

121 Tax treated as chargeable in respect of relevant transactions

(1) This Part applies, and any double taxation arrangements apply, as if the tax that would have been chargeable as mentioned in section 120(1) had been chargeable.

(2) In calculating tax notionally chargeable under subsection (1), it is to be assumed—

(a) that, to the extent permitted by the law of the other member State mentioned in section 120(1), losses arising on the relevant transfer are set against profits arising on it, and

(b) that any relief available under that law is claimed.

(3) In this section "the relevant transfer" means—

(a) the transfer of assets or liabilities mentioned in section 120(5)(a) or (b),

(b) the transfer of rights and liabilities mentioned in section 120(5)(c) or (d), or
(c) the transfer of intangible fixed assets mentioned in section 120(5)(e) or (f).

Cross-border transfers and mergers: chargeable gains

122 Tax treated as chargeable in respect of gains on transfer of non-UK business

(1) Subsection (3) applies if—
(a) section 140C or 140F of TCGA 1992 applies, and
(b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.

(2) In this section—

"company A"—
(a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and
(b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,

"the host State" means the member State (other than the United Kingdom) mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,

"the transfer" means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and

"the transfer subsections" means—
(a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident "company" to one resident in another member State),
(b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident "company" to transferees including a "company" resident in another member State), and
(c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident "company" or co-operative society to one resident in another member State, as part of genuine merger of two or more "companies" or societies).

(3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.

(4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.

(5) For the purposes of subsection (4) "the required basis" is that—
(a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and
(b) any relief available to company A under the law of the host State has been duly claimed.

Interpretation of sections related to the Mergers Directive

123 Interpretation of sections 116 to 122

In sections 116 to 122 and this section—

"company" means any entity listed as a company in the Annex to the Mergers Directive,

"derivative contract" has the same meaning as in Part 7 of CTA 2009,

"intangible fixed assets" and "chargeable intangible assets", in relation to any person, have the same meaning as in Part 8 of CTA 2009,

"loan relationship" has the same meaning as in Part 5 of CTA 2009,

"the Mergers Directive" means Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different member States and to the transfer of the registered office, of an SE or SCE, between member States,

"proceeds of realisation", in relation to intangible fixed assets, has the meaning given in section 739 of CTA 2009, and

"recognised for tax purposes" has the same meaning as in Part 8 of CTA 2009.

Cases about being taxed otherwise than in accordance with double taxation arrangements

124 Giving effect to solutions to cases and mutual agreements resolving cases

(1) Subsections (2) and (4) apply if under, and for the purposes of, double taxation arrangements made in relation to a territory outside the United Kingdom—

(a) a person presents, to the Commissioners for Her Majesty's Revenue and Customs or to an authority in the territory, a case concerning the person's being taxed (whether in the United Kingdom or the territory) otherwise than in accordance with the arrangements, and

(b) the Commissioners arrive at a solution to the case or make a mutual agreement with an authority in the territory for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, or

(c) the enactments relating to petroleum revenue tax,

may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the person affected, even if that involves making the claim after a deadline imposed by another enactment.

125 Effect of, and deadline for, presenting a case

(1) This section applies if double taxation arrangements include provision for a person to present a case—

(a) to the Commissioners for Her Majesty's Revenue and Customs, or

(b) to an officer of Revenue and Customs,

concerning the person's being taxed otherwise than in accordance with the arrangements.

(2) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts, the enactments relating to capital gains tax or the enactments relating to petroleum revenue tax, and

(b) is accordingly not subject to section 42 of TMA 1970 or any other enactment relating to the making of such claims.

(3) Any such case must be presented before the end of—

(a) the period of 6 years following the end of the chargeable period to which the case relates, or

(b) such longer period as may be specified in the arrangements.

The Arbitration Convention

126 Meaning of "the Arbitration Convention"

In sections 127 and 128 "the Arbitration Convention" means the Convention, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23 July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).

127 Giving effect to agreements, decisions and opinions under the Convention

(1) In this section "Convention determination" means—

(a) an agreement or decision, made under the Arbitration Convention by the Commissioners for Her Majesty's Revenue and Customs (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Arbitration Convention, on the elimination of double taxation.

(2) Subsection (3) applies if the Arbitration Convention requires the Commissioners to give effect to a Convention determination.

(3) The Commissioners are to give effect to the Convention determination despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(4) An adjustment under subsection (3) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(5) An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.

128 Disclosure under the Convention

(1) The obligation as to secrecy imposed by any enactment does not prevent—

(a) the Commissioners for Her Majesty's Revenue and Customs, or

(b) any authorised Revenue and Customs official,

from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under the Convention.

(2) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,

(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,

(d) a person acting on behalf of an officer of Revenue and Customs, or

(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Disclosure of information

129 Disclosure where relief given overseas for tax paid in the United Kingdom

(1) Subsection (2) applies if the law of a territory outside the United Kingdom makes provision allowing, in respect of the payment of—

(a) income tax,

(b) corporation tax,

(c) capital gains tax, or

(d) petroleum revenue tax,

relief from tax payable under that law.

(2) The obligation as to secrecy imposed upon Revenue and Customs officials by—

(a) the Tax Acts,

(b) the enactments relating to capital gains tax, and

(c) the enactments relating to petroleum revenue tax,

does not prevent disclosure, to the authorised officer of the authorities of the territory, of such facts as may be necessary to enable the proper relief to be given under the law of the territory.

(3) The reference in subsection (1) to tax payable under the law of the territory includes only—

(a) taxes which are charged on income and which correspond to income tax,

(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax,

(c) taxes which are charged on capital gains and which correspond to capital gains tax, and

(d) taxes which—

(i) are charged on amounts corresponding to amounts on which petroleum revenue tax is charged, and

(ii) correspond to petroleum revenue tax.

(4) For the purposes of subsection (3), tax may correspond to income tax, corporation tax, capital gains tax or petroleum revenue tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

(5) In this section "Revenue and Customs official" means any person who is or was—

(a) a Commissioner for Her Majesty's Revenue and Customs,

(b) an officer of Revenue and Customs,

(c) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs,

(d) a person acting on behalf of an officer of Revenue and Customs, or

(e) a member of a committee established by the Commissioners for Her Majesty's Revenue and Customs.

Interpretation of double taxation arrangements

130 Interpreting provision about UK taxation of profits of foreign enterprises

(1) Subsection (4) applies if double taxation arrangements make the provision, however expressed, mentioned in subsection (2).

(2) The provision is that the profits of an enterprise within subsection (3) are not to be subject to United Kingdom tax except so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

(3) An enterprise is within this subsection if the enterprise—

(a) is resident outside the United Kingdom, or

(b) carries on a trade, or profession or business, the control or management of which is situated outside the United Kingdom.

(4) The provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(5) Subsection (4)—

(a) does not apply in relation to income of a person resident in the United Kingdom if section 858 of ITTOIA 2005 (UK resident partner is taxable on share of firm's income despite any double taxation arrangements) applies to the income, and

(b) does not apply in relation to income of a company resident in the United Kingdom if section 1266(2) of CTA 2009 (UK resident company that is partner in a firm is taxable on share of firm's income despite any double taxation arrangements) applies to the income.

(6) A person is resident in the United Kingdom for the purposes of this section if the person is resident in the United Kingdom for the purposes of the double taxation arrangements.

131 Interpreting provision about interest influenced by special relationship

(1) Subsections (3) and (6) apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) contain a special relationship rule.

(2) A "special relationship rule" is provision that—

(a) applies if the amount of the interest paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship,

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest, and the other terms, which would have been agreed in the absence of the special relationship.

(4) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the debt on which interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).

(5) If—

(a) a company ("L") makes a loan to another company with which it has a special relationship, and

(b) it is not part of L's business to make loans generally,

the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (3).

(6) The special relationship rule is to be read as requiring the taxpayer—

(a) to show that there is no special relationship, or

(b) if there is a special relationship, to show the amount of interest that would have been paid in the absence of the relationship.

132 Interpreting provision about royalties influenced by special relationship

(1) Subsection (3) and section 133 apply if double taxation arrangements—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) contain a special relationship rule.

(2) A "special relationship rule" is provision that—

(a) applies if the amount of the royalties paid is, because of a special relationship, greater than the amount ("the ordinary amount") that would have been paid in the absence of the relationship, and

(b) has the effect that the provision mentioned in subsection (1)(a) is to apply only to the ordinary amount.

(3) The special relationship rule is to be read as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the special relationship,

(b) the rate or amounts of royalties, and the other terms, which would have been agreed in the absence of the special relationship, and

(c) if subsection (4) applies, the factors specified in subsection (5).

(4) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person ("PR") who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of PR,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by PR, or

(d) a person who is, or has at any time been, an associate of a person within paragraph (c).

(5) The factors mentioned in subsection (3)(c) are—

(a) the amounts which were paid under the transaction, or under each of the transactions in a series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been paid under that transaction, or under each of those transactions, in the absence of a special relationship, and

(c) the question whether the transaction, or series of transactions, would have taken place in the absence of a special relationship.

(6) Subsection (3) does not apply if the special relationship rule expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(7) For the purposes of this section, a person ("A") is an associate of another person ("B") at a given time if—

(a) A was directly or indirectly participating in the management, control or capital of B at that time, or

(b) the same person was, or the same persons were, directly or indirectly participating in the management, control or capital of A and B at that time.

(8) For the interpretation of subsection (7), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (7) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

133 Special relationship rule for royalties: matters to be shown by taxpayer

(1) If this section applies (as to which, see section 132(1)), the special relationship rule is to be read as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) as the case may be, the rate or amounts of royalties that would have been payable in the absence of the special relationship.

(2) The requirement under subsection (1)(a) includes whichever is applicable of the following requirements.

(3) The first of those requirements is—

(a) to show that no person of any of the descriptions in section 132(4)(a) to (d) has previously been the beneficial owner of the asset in respect of which the royalties are paid, and

(b) to show that no person of any of those descriptions has previously been the beneficial owner of any asset which that asset represents or from which it is derived.

(4) The second of those requirements is—

(a) to show that the transaction, or series of transactions, mentioned in section 132(5)(a) would have taken place in the absence of a special relationship, and

(b) to show the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of a special relationship.

Assessments

134 Correcting assessments where relief is available

(1) Subsections (5) and (6) apply if—

(a) under double taxation arrangements, relief may be given in the United Kingdom, or in the territory in relation to which the arrangements are made, in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(2) Subsections (5) and (6) also apply if—

(a) under unilateral relief arrangements for a territory outside the United Kingdom, relief may be given in respect of any income or any chargeable gain, and

(b) condition A or B is met.

(3) Condition A is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is not made in respect of the full amount of the income or gain.

(4) Condition B is that it appears that the assessment—

(a) to income tax or corporation tax made in respect of the income, or

(b) to corporation tax or capital gains tax made in respect of the gain,

is incorrect having regard to the credit, if any, to be given under the arrangements.

(5) Assessments may be made that are necessary to ensure—

(a) that the full amount of the income or gain is assessed, and

(b) that the proper credit, if any, is given.

(6) If the income is entrusted to any person in the United Kingdom for payment, an assessment under subsection (5) may be made on the recipient of the income.

(7) An officer of Revenue and Customs may make amendments—

(a) of assessments or determinations, or

(b) of decisions on claims,

that are necessary in consequence of Chapter 1 so far as it applies for petroleum revenue tax purposes.

PART 3

DOUBLE TAXATION RELIEF FOR SPECIAL WITHHOLDING TAX

Introductory

135 Relief under this Part: introductory

(1) This Part (except sections 144 and 145) applies for the purpose of giving relief from double taxation in respect of special withholding tax.

(2) Relief under this Part—

(a) is given by set-off against income tax or capital gains tax, and

(b) so far as it cannot be given by set-off against income tax or capital gains tax, is given by repayment.

136 Interpretation of Part

(1) Subsections (2) to (7) have effect for the purposes of this Part.

(2) "Double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

(3) "International arrangements", in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income—

(a) under the law of the United Kingdom, or

(b) under that law and the law of the territory.

(4) "The Savings Directive" means Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

(5) "Savings income"—

(a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression "interest payment" has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and

(b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned.

(6) "Special withholding tax" means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 11 of the Savings Directive (withholding tax to be levied in Belgium, Luxembourg and Austria for the period described in the Directive), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(7) In the application of this Part in relation to capital gains tax, expressions used in this Part and in TCGA 1992 have the same meaning in this Part as in TCGA 1992.

Credit etc for special withholding tax

137 Income tax credit etc for special withholding tax

(1) Subsection (5) applies if each of conditions A to C is met.

(2) Condition A is that a person—

(a) is liable to income tax for a tax year in respect of a payment of savings income, or

(b) would be liable to income tax for a tax year in respect of a payment of savings income but for any exemption or relief.

(3) Condition B is that special withholding tax is levied in respect of the payment.

(4) Condition C is that the person is UK resident for the tax year.

(5) On the making of a claim, income tax ("the deemed tax") is to be treated as having been—

(a) paid by or on behalf of the person for the tax year, and

(b) deducted at source for the tax year for the purposes of the provisions listed in subsection (7).

(6) The amount of the deemed tax is given by section 138.

(7) The provisions mentioned in subsection (5)(b) are—

section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
section 8 of TMA 1970 (personal return),
section 8A of TMA 1970 (trustee's return),
section 9 of TMA 1970 (returns to include self-assessment),
section 59A of TMA 1970 (payments on account of income tax),
section 59B of TMA 1970 (payments of income tax and capital gains tax), and
section 824(3) of ICTA (repayment supplements: determination of relevant time).

138 Amount and application of the deemed tax under section 137

(1) For the purposes of section 137, the amount of the deemed tax is—

(a) the amount of the special withholding tax levied (see section 137(3)), less

(b) any amounts of that tax that are within subsection (2).

(2) An amount of special withholding tax levied is within this subsection if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 137(2).

(3) Subsection (4) applies if the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for that tax year (before any set-off for the deemed tax).

(4) So far as it would not otherwise be the case—

(a) the excess is to be set against any capital gains tax for which the person is liable for that tax year, and

(b) the person is entitled to a repayment of income tax in respect of any remaining balance of the excess.

139 Capital gains tax credit etc for special withholding tax

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that a person makes a disposal of assets in a tax year.

(3) Condition B is that if a chargeable gain were to accrue on the disposal—

(a) the gain would accrue to the person, and

(b) the person would be chargeable to capital gains tax in respect of the gain.

(4) Condition C is that—

(a) the consideration for the disposal consists of, or includes, an amount of savings income, and

(b) special withholding tax is levied in respect of the whole, or any part, of the consideration.

(5) Condition D is that the person is resident in the United Kingdom for the tax year.

(6) On the making of a claim, capital gains tax ("the deemed tax") is to be—

(a) treated as having been paid by or on behalf of the person for the tax year, and

(b) treated for the purposes of section 283(2) of TCGA 1992 (repayment supplements: determination of relevant time) as having been paid on the 31 January following the tax year.

(7) The amount of the deemed tax is given by section 140.

(8) For the purposes of subsection (3)(b), disregard—

(a) any deductions that are to be made from the total amount referred to in section 2(2) of TCGA 1992 (deductions for allowable losses), and

(b) section 3 of TCGA 1992 (annual exempt amount).

140 Provisions about the deemed tax under section 139

(1) For the purposes of section 139, the amount of the deemed tax is—

(a) the amount of the special withholding tax levied (see section 139(4)(b)), less

(b) any amounts of that tax that are within subsection (2) or (3).

(2) An amount of special withholding tax levied is within this subsection if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 139(2).

(3) An amount of special withholding tax levied is within this subsection if by reference to that amount of that tax—

(a) there is that amount of deemed tax under section 137(5), or

(b) there would be that amount of deemed tax under section 137(5) on the making of a claim.

(4) Subsection (5) applies if the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for that tax year (before any set-off for the deemed tax).

(5) So far as it would not otherwise be the case—

(a) the excess is to be set against any income tax for which the person is liable for that tax year, and

(b) the person is entitled to a repayment of capital gains tax in respect of any remaining balance of the excess.

(6) For the purposes of the provisions listed in subsection (7) in relation to the person for that tax year, references in those provisions to income tax deducted at source for that tax year include the deemed tax.

(7) Those provisions are—

section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),

section 8 of TMA 1970 (personal return),

section 8A of TMA 1970 (trustee's return),

section 9 of TMA 1970 (returns to include self-assessment), and

section 59B of TMA 1970 (payments of income tax and capital gains tax).

141 Credit under Chapter 2 of Part 2 to be allowed first

(1) Any credit for foreign tax allowed under Chapter 2 of Part 2 against income tax or capital gains tax is to be allowed before effect is given to sections 137 to 140.

(2) In this section "foreign tax" has the same meaning as in that Chapter (see section 21).

Calculation of income or gain on remittance basis where special withholding tax levied

142 Conditions for purposes of section 143

(1) This section applies for the purposes of section 143.

(2) Condition A is that—

(a) a person is liable to income tax in respect of a payment of savings income, or

(b) a chargeable gain accrues to a person on a disposal by the person of assets in circumstances where the consideration for the disposal consists of, or includes, an amount of savings income.

(3) Condition B is that special withholding tax is levied in respect of—

(a) the payment of savings income, or

(b) the whole or any part of the consideration for the disposal.

(4) Condition C is that a claim under this Part has been made in respect of the special withholding tax.

(5) Condition D is that no credit for foreign tax in respect of the savings income or chargeable gain concerned is allowed under Chapter 2 of Part 2 (so that sections 31(2) and 32(2), which make provision similar to section 143, do not apply).

143 Taking account of special withholding tax in calculating income or gains

(1) Subsection (2) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) income tax is payable by reference to the amount of the savings income received in the United Kingdom.

(2) For income tax purposes, the amount received is increased by the amount of special withholding tax—

(a) levied in respect of it, and

(b) in respect of which a claim under this Part has been made.

(3) Subsection (4) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom.

(4) For capital gains tax purposes, the amount received is increased by the amount given by—

$$\mathrm{SWT} \times \frac{\mathrm{GUK}}{\mathrm{G} - \mathrm{SWT}}$$

where—

SWT is the amount of special withholding tax—

(a) levied in respect of the whole or the part of the consideration for the disposal, and

(b) in respect of which a claim has been made under this Part,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(5) Subsection (6) applies if—

(a) each of conditions A to D of section 142 is met, and

(b) neither subsection (2) nor subsection (4) applies.

(6) In calculating—

(a) the amount of the income for income tax purposes, or

(b) the amount of any chargeable gain for capital gains tax purposes,

no deduction is to be made for special withholding tax in respect of which a claim has been made under this Part (whether special withholding tax in respect of the same, or any other, income or in respect of the same, or any other, chargeable gains).

Certificates to avoid levy of special withholding tax

144 Issue of certificate

(1) This section enables officers of Revenue and Customs to issue certificates to be used under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to the paying agent a certificate drawn up by a competent authority in the beneficial owner's member State of residence for tax purposes), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(2) If, on the written application of a person, an officer is satisfied that the applicant has provided an officer with—

(a) the required information, and

(b) the documents (if any) required by an officer to verify that information,

an officer must issue a certificate to the applicant.

(3) In subsection (2) "the required information" means—

(a) the applicant's name and address,

(b) the applicant's National Insurance number or, if the applicant does not have one, the applicant's date, town and country of birth,

(c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to payments of savings income,

(d) the name and address of the paying agent who is to make the payments of savings income to, or to secure the payments of savings income for, the applicant, and

(e) the period, not exceeding 3 years, for which the applicant would like the certificate to be valid.

(4) A certificate under this section must be in writing and must state—

(a) the information mentioned in subsection (3)(a) to (d), and

(b) the period of validity of the certificate (which must not exceed 3 years).

(5) A certificate under this section must be issued no later than the end of the period of 2 months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).

(6) If the requirements of—

(a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and

(b) any corresponding provision of any international arrangements,

differ to any extent, subsections (3) to (5) have effect, in their application in relation to the international arrangements, with such modifications as may be required because of those arrangements.

145 Refusal to issue certificate and appeal against refusal

(1) This section applies if, on an application for a certificate under section 144, an officer of Revenue and Customs ("the decision officer") is not satisfied that the applicant has provided an officer with the information and documents required by or under section 144(2).

(2) An officer must give written notice ("the refusal notice") to the applicant of the decision officer's refusal to issue a certificate.

(3) The refusal notice must specify the reasons for the refusal.

(4) The applicant may by written notice ("the appeal notice") appeal against the refusal.

(5) The appeal notice must be given to an officer within 30 days of the date of the refusal notice.

(6) Part 5 of TMA 1970 (appeals and other proceedings) is to apply in relation to an appeal under this section.

(7) On an appeal that is notified to the tribunal, the tribunal may—
(a) confirm the refusal notice, or
(b) quash it and require an officer to issue a certificate.

(8) In this section "the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

PART 4

TRANSFER PRICING

CHAPTER 1

BASIC TRANSFER-PRICING RULE

146 Application of this Part

This Part applies for—
(a) corporation tax purposes, and
(b) income tax purposes.

147 Tax calculations to be based on arm's length, not actual, provision

(1) For the purposes of this section "the basic pre-condition" is that—
(a) provision ("the actual provision") has been made or imposed as between any two persons ("the affected persons") by means of a transaction or series of transactions,

(b) the participation condition is met (see section 148),
(c) the actual provision is not within subsection (7) (oil transactions), and
(d) the actual provision differs from the provision ("the arm's length provision") which would have been made as between independent enterprises.

(2) Subsection (3) applies if—
(a) the basic pre-condition is met, and
(b) the actual provision confers a potential advantage in relation to United Kingdom taxation on one of the affected persons.

(3) The profits and losses of the potentially advantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(4) Subsection (5) applies if—
(a) the basic pre-condition is met, and
(b) the actual provision confers a potential advantage in relation to United Kingdom taxation (whether or not the same advantage) on each of the affected persons.

(5) The profits and losses of each of the affected persons are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(6) Subsections (3) and (5) have effect subject to—
(a) section 165 (exemption for dormant companies),
(b) section 166 (exemption for small and medium-sized enterprises),
(c) section 213 (this Part generally does not affect calculation of capital allowances),
(d) section 214 (this Part generally does not affect calculation of chargeable gains),
(e) section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and
(f) section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

(7) The actual provision is within this subsection if it is made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of sections 225F to 225J of ITTOIA 2005 or any of sections 281 to 285 of CTA 2010 (transactions and deemed transactions involving oil treated as made at market value).

148 The "participation condition"

(1) For the purposes of section 147(1)(b), the participation condition is met if—
(a) condition A is met in relation to the actual provision so far as the actual provision is provision relating to financing arrangements, and
(b) condition B is met in relation to the actual provision so far as the actual provision is not provision relating to financing arrangements.

(2) Condition A is that, at the time of the making or imposition of the actual provision or within the period of six months beginning with the day on which the actual provision was made or imposed—

(a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(3) Condition B is that, at the time of the making or imposition of the actual provision—

(a) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(4) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

(5) For the interpretation of subsections (2) and (3) see sections 157 to 163.

CHAPTER 2

KEY INTERPRETATIVE PROVISIONS

Meaning of certain expressions that first appear in section 147

149 "Actual provision" and "affected persons"

(1) In this Part—

"the actual provision", and

"the affected persons",

have the meaning given by section 147(1).

(2) Subsection (1) does not apply if Chapters 1 and 3 to 6 apply in accordance with section 205(2) to (4) (oil-related ring-fence trades) but, in that event, in this Part—

"the actual provision" means the provision mentioned in section 205(1)(b), and

"the affected persons" means the two persons mentioned in section 205(2).

(3) Subsections (1) and (2) are subject to subsection (4).

(4) If the participation condition (see section 148) would not be met but for section 161 or 162 (cases in which actual provision relates, to any extent, to financing arrangements), then in section 147(1)(d), (2)(b), (3), (4)(b) and (5) "the actual provision" is a reference to the actual provision so far as relating to the financing arrangements concerned.

150 "Transaction" and "series of transactions"

(1) In this Part "transaction" includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Part to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions is not prevented by reason only of one or more of the matters mentioned in subsection (4) from being regarded for the purposes of this Part as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are—

(a) that there is no transaction in the series to which both those persons are parties,

(b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons, and

(c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this section "arrangement" means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

151 "Arm's length provision"

(1) In this Part "the arm's length provision" has the meaning given by section 147(1).

(2) For the purposes of this Part, the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises include the case in which provision is made or imposed as between two persons but no provision would have been made as between independent enterprises; and references in this Part to the arm's length provision are to be read accordingly.

152 Arm's length provision where actual provision relates to securities

(1) This section applies where—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies ("the issuing company").

(2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship,

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the special relationship.

(3) Subsection (2) has effect subject to subsections (4) and (5).

(4) If—

(a) a company ("L") makes a loan to another company with which it has a special relationship, and

(b) it is not part of L's business to make loans generally,

the fact that it is not part of L's business to make loans generally is to be disregarded in applying subsection (2).

(5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(6) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness,

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—

(i) the issue of a security by the issuing company, or

(ii) the making of a loan, or a loan of a particular amount, to the issuing company, and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

153 Arm's length provision where security issued and guarantee given

(1) This section applies where the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security by a company which is one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by a company which is the other affected person.

(2) Section 147(1)(d) is to be read as requiring account to be taken of all factors, including—

(a) the question whether the guarantee would have been provided at all in the absence of the special relationship,

(b) the amount that would have been guaranteed in the absence of the special relationship, and

(c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship.

(3) Subsection (2) has effect subject to subsections (4) and (5).

(4) If—

(a) a company ("G") provides a guarantee in respect of another company with which it has a special relationship, and

(b) it is not part of G's business to provide guarantees generally,

the fact that it is not part of G's business to provide guarantees generally is to be disregarded in applying subsection (2).

(5) Section 147(1)(d) is to be read as requiring that, in the determination of any of the matters mentioned in subsection (6), no account is to be taken of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(6) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness,

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving—

(i) the issue of a security by the issuing company, or

(ii) the making of a loan, or a loan of a particular amount, to the issuing company, and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

154 Interpretation of sections 152 and 153

(1) Subsections (3) to (7) apply for the purposes of sections 152 and 153.

(2) Subsection (6) applies also for the purposes of subsection (7)(a).

(3) "Special relationship" means any relationship by virtue of which the participation condition is met (see section 148) in the case of the affected persons concerned.

(4) Any reference to a guarantee includes—

(a) a reference to a surety, and

(b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

(5) One company ("A") has a "participatory relationship" with another ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

(6) "Security" includes securities not creating or evidencing a charge on assets.

(7) Any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

155 "Potential advantage" in relation to United Kingdom taxation

(1) Subsection (2) applies for the purposes of this Part.

(2) The actual provision confers a potential advantage on a person in relation to United Kingdom taxation wherever, disregarding this Part, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of Effects A and B.

(3) Effect A is that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of the person's profits for any chargeable period.

(4) Effect B is that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of the person.

(5) In determining for the purposes of subsection (3) or (4) the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a non-UK resident, there is to be left out of account any income of that person which is—

(a) disregarded income within the meaning given by section 813 of ITA 2007 (limits on liability to income tax of non-UK residents), or

(b) disregarded company income within the meaning given by section 816 of that Act.

(6) For the purposes of subsections (2) to (4)—

(a) Part 7 (tax treatment of financing costs and income), and

(b) paragraph E of the list in section 1000(1) of CTA 2010 (excessive interest etc treated as a distribution),

are to be disregarded.

156 "Losses" and "profits"

(1) In this Part "losses" includes amounts which are not losses but in respect of which relief may be given in accordance with—

(a) section 57 of ITTOIA 2005 (pre-trading expenses),

(b) section 88 of ITA 2007 (carry forward of certain interest),

(c) section 61 of CTA 2009 (pre-trading expenses),

(d) sections 387 to 391 of CTA 2009 (insurance companies: non-trading deficits on loan relationships),

(e) Chapter 16 of Part 5 of CTA 2009 (non-trading deficits on loan relationships),

(f) section 1223 of CTA 2009 (excess of management expenses), or

(g) Part 5 of CTA 2010 (group relief).

(2) In this Part "profits" includes income.

"Direct participation" in management, control or capital of a person

157 Direct participation

(1) Subsection (2) applies for the purposes of—

(a) this Part,

(b) in Part 2, section 132(7), and

(c) in Part 5, section 219(2).

(2) A person is directly participating in the management, control or capital of another person at a particular time if (and only if) that other person is at that time—

(a) a body corporate or a firm, and

(b) controlled by the first person.

"Indirect participation" in management, control or capital of a person

158 Indirect participation: defined by sections 159 to 162

(1) This section is about how to read the references, in this Part and in some other provisions of this Act, to indirect participation.

(2) For the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 161 so provides.

(3) For the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b), a person is indirectly participating in the management, control or capital of another person only if section 159, 160 or 162 so provides.

(4) For the purposes of—

(a) sections 154(5) and 204(4),

(b) in Part 2, section 132(7), and

(c) in Part 5, section 219(2),

a person is indirectly participating in the management, control or capital of another person only if section 159 or 160 so provides.

159 Indirect participation: potential direct participant

(1) Subsection (2) applies for the purposes of—

(a) sections 148(2) and (3), 154(5), 175(2) and 204(4),

(b) in Part 2, section 132(7), and

(c) in Part 5, section 219(2).

(2) A person ("P") is indirectly participating in the management, control or capital of another person ("A") at a particular time if P would be directly participating in the management, control or capital of A at that time if the rights and powers attributed to P included all the rights and powers mentioned in subsection (3) that are not already attributed to P for the purpose of deciding under section 157 whether P is directly participating in the management, control or capital of A.

(3) The rights and powers referred to in subsection (2) are—

(a) rights and powers which P is entitled to acquire at a future date,

(b) rights and powers which P will, at a future date, become entitled to acquire,

(c) rights and powers of persons other than P so far as they are rights or powers falling within subsection (4),

(d) rights and powers of any person with whom P is connected (see section 163), and

(e) rights and powers which would be attributed by subsection (2) to a person with whom P is connected were it being decided under that subsection whether that connected person is indirectly participating in the management, control or capital of A.

(4) Rights and powers fall within this subsection so far as they—

(a) are required, or may be required, to be exercised in any one or more of the following ways—

(i) on behalf of P,

(ii) under the direction of P, or

(iii) for the benefit of P, and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(5) In subsections (3)(c) to (e) and (4), the references to a person's rights and powers include references to any rights or powers which the person either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(6) In paragraph (e) of subsection (3), the reference to rights and powers which would be attributed to a connected person includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to the connected person through a number of persons each of whom is connected with at least one of the others.

(7) References in this section—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

160 Indirect participation: one of several major participants

(1) Subsection (2) applies for the purposes of—

(a) sections 148(2) and (3), 154(5), 175(2) and 204(4),

(b) in Part 2, section 132(7), and

(c) in Part 5, section 219(2).

(2) A person is indirectly participating in the management, control or capital of another person at a particular time if the first person is, at that time, one of a number of major participants in that other person's enterprise.

(3) For the purposes of this section, a person ("A") is a major participant in another person's enterprise at a particular time if at that time—

(a) that other person ("the subordinate") is a body corporate or firm, and

(b) the 40% test is met in the case of each of two persons—

(i) who, taken together, control the subordinate, and

(ii) of whom one is A.

(4) For the purposes of this section, the 40% test is met in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.

(5) For the purposes of this section—

(a) the question whether a person is controlled by any two or more persons taken together, and

(b) any question whether the 40% test is met in the case of a person who is one of two persons,

is to be determined after attributing to each of the persons all the rights and powers which would be attributed by section 159(2) to a person were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of another person.

(6) References in this section—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

161 Indirect participation: sections 148 and 175: financing cases

(1) Subsection (2) applies for the purposes of sections 148(2)(a) and (3)(a) and 175(2)(a).

(2) A person ("P") is indirectly participating in the management, control or capital of another ("A") at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for A,

(b) A is a body corporate or firm,

(c) P and other persons acted together in relation to the financing arrangements, and

(d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c).

(3) It is immaterial for the purposes of subsection (2)(c) whether P and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

(4) In subsection (2)(d) "relevant time" means—

(a) a time when P and the other persons were acting together in relation to the financing arrangements, or

(b) a time in the period of six months beginning with the day on which they ceased so to act.

(5) In determining for the purposes of subsection (2)(d) whether P would be taken to have control of another person ("A"), the rights and powers of any person (and not just P) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.

(6) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

162 Indirect participation: sections 148 and 175: further financing cases

(1) Subsection (2) applies for the purposes of sections 148(2)(b) and (3)(b) and 175(2)(b).

(2) A person ("Q") is indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons ("B"),

(b) B is a body corporate or firm,

(c) Q and other persons acted together in relation to the financing arrangements, and

(d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c).

(3) It is immaterial for the purposes of subsection (2)(c) whether Q and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

(4) In subsection (2)(d) "relevant time" means—

(a) a time when Q and the other persons were acting together in relation to the financing arrangements, or

(b) a time in the period of six months beginning with the day on which they ceased so to act.

(5) In determining for the purposes of subsection (2)(d) whether Q would be taken to have control of another person ("A"), the rights and powers of any person (and not just Q) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that person is indirectly participating in the management, control or capital of A.

(6) In this section "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

163 Meaning of "connected" in section 159

(1) Subsections (2) and (3) apply for the purposes of section 159 and this section.

(2) Two persons are connected with each other if one of them is an individual and the other is—

(a) the individual's spouse or civil partner,

(b) a relative of the individual,

(c) a relative of the individual's spouse or civil partner, or

(d) the spouse, or civil partner, of a person within paragraph (b) or (c).

(3) Two persons are connected with each other if one of them is a trustee of a settlement and the other is—

(a) a person who in relation to that settlement is a settlor, or

(b) a person who is connected with a person within paragraph (a).

(4) In this section—

"relative" means brother, sister, ancestor or lineal descendant, and

"settlement" and "settlor" have the same meaning as in section 620 of ITTOIA 2005.

Application of OECD principles

164 Part to be interpreted in accordance with OECD principles

(1) This Part is to be read in such manner as best secures consistency between—

(a) the effect given to sections 147(1)(a), (b) and (d) and (2) to (6), 148 and 151(2), and

(b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.

(2) Subsection (1) has effect subject to—

section 147(1)(c) and (7) (oil-related provision to which Part does not apply),

sections 205 and 206 (rules for oil-related ring-fence trades),

section 217(3) to (7) (provision for sales of oil),

section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and

section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

(3) In this section "the OECD model" means—

(a) the rules which, at the passing of ICTA (which occurred on 9 February 1988), were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or

(b) any rules in the same or equivalent terms.

(4) In this section "the transfer pricing guidelines" means—

(a) all the documents published by the Organisation for Economic Co-operation and Development, at any time before 1 May 1998, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and

(b) such documents published by that Organisation on or after that date as may for the purposes of this Part be designated, by an order made by the Treasury, as comprised in the transfer pricing guidelines.

(5) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

CHAPTER 3

EXEMPTIONS FROM BASIC RULE

165 Exemption for dormant companies

(1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which meets the condition in subsection (2).

(2) The condition is that—

(a) the company was dormant throughout the pre-qualifying period, and
(b) apart from section 147, the company has continued to be dormant at all times since the end of the pre-qualifying period.

(3) In subsection (2) "the pre-qualifying period" means—
(a) if there is an accounting period of the company that ends on 31 March 2004, that accounting period, or
(b) if there is no such accounting period, the period of 3 months ending with that date.

(4) In this section "dormant" has the meaning given by section 1169 of the Companies Act 2006.

166 Exemption for small and medium-sized enterprises

(1) Section 147(3) and (5) do not apply in calculating for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see section 172).

(2) Exceptions to subsection (1) are provided—
(a) in the case of a small enterprise, by section 167, and
(b) in the case of a medium-sized enterprise, by sections 167 and 168.

167 Small and medium-sized enterprises: exceptions from exemption

(1) Subsections (2) and (3) set out exceptions to section 166(1).

(2) The first exception is if the small or medium-sized enterprise elects for section 166(1) not to apply in relation to the chargeable period.

Any such election is irrevocable.

(3) The second exception is if—
(a) the other affected person, or
(b) a party to a relevant transaction,

is, at the time when the actual provision is or was made or imposed, a resident of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).

(4) For the purposes of subsection (3)—
(a) a "party to a relevant transaction" is a person who, if the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions, and
(b) "qualifying territory" and "non-qualifying territory" are defined in section 173.

(5) In subsection (3) "resident", in relation to a territory—
(a) means a person who, under the law of that territory, is liable to tax there by reason of the person's domicile, residence or place of management, but
(b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

168 Medium-sized enterprises: exception from exemption: transfer pricing notice

(1) Section 166(1) does not apply in relation to any provision made or imposed if—

(a) the potentially advantaged person is a medium-sized enterprise for the chargeable period, and

(b) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.

(2) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.

169 Giving of transfer pricing notices

(1) This section applies to a transfer pricing notice given to a person.

(2) The notice may be given in relation to—

(a) any provision specified, or of a description specified, in the notice, or

(b) every provision in relation to which one or other of the assumptions in section 147(3) and (5) would, apart from section 166(1), be required to be made when calculating the person's profits and losses for tax purposes.

(3) The notice may be given only after a notice of enquiry has been given to the person in relation to the person's tax return for the chargeable period concerned.

(4) The notice must identify the officer of Revenue and Customs to whom any notice of appeal under section 170 is to be given.

(5) In subsection (3) "notice of enquiry" means a notice under—

(a) section 9A or 12AC of TMA 1970, or

(b) paragraph 24 of Schedule 18 to FA 1998.

170 Appeals against transfer pricing notices

(1) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the ground that the condition in section 168(1)(a) is not met.

(2) Any such appeal must be brought by giving written notice of appeal to the officer of Revenue and Customs identified in the notice in accordance with section 169(4).

(3) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

171 Tax returns where transfer pricing notice given

(1) If a transfer pricing notice is given to a person ("T"), T may amend T's tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

(a) the day on which the notice is given, or

(b) if T appeals under section 170 against the decision to give the notice, the day on which the appeal is finally determined or abandoned.

(2) If a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—

(a) the end of the period of 90 days specified in subsection (1), or
(b) the earlier amendment of the tax return for the purpose of complying with the notice.

(3) So far as relating to any provision made or imposed by or in relation to a person—
(a) who is a medium-sized enterprise for a chargeable period,
(b) who does not make an election under section 167(2) for that period, and
(c) who is not excepted from section 166(1) in relation to that provision for that period because of section 167(3),

the tax return required to be made for that period is a return that disregards section 147(3) and (5).

(4) Subsection (3) does not prevent a tax return for a period becoming incorrect if in the case of any provision made or imposed—
(a) a transfer pricing notice is given which has effect in relation to that provision for that period,
(b) the return is not amended in accordance with subsection (1) for the purpose of complying with the notice, and
(c) the return ought to have been so amended.

(5) In this section—

"closure notice" means a notice under—
(a) section 28A or 28B of TMA 1970, or
(b) paragraph 32 of Schedule 18 to FA 1998,

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule, and

"tax return" means—
(a) a return under section 8, 8A or 12AA of TMA 1970, or
(b) a company tax return.

172 Meaning of "small enterprise" and "medium-sized enterprise"

(1) In this Chapter—
(a) "small enterprise" means a small enterprise as defined in the Annex, and
(b) "medium-sized enterprise" means an enterprise which—
(i) falls within the category of micro, small and medium-sized enterprises as defined in the Annex, and
(ii) is not a small enterprise as defined in the Annex.

(2) For the purposes of subsection (1), the Annex has effect with the modifications set out in subsections (4) to (7).

(3) In this section "the Annex" means the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (concerning the definition of micro, small and medium-sized businesses).

(4) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Part whether—
(a) that enterprise, or

(b) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise.

(5) Article 3 of the Annex has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).

(6) The first sentence of Article 4(1) of the Annex has effect as if the data to apply to—

(a) the headcount of staff, and

(b) the financial amounts,

were the data relating to the chargeable period referred to in section 166(1) (instead of the period described in that sentence) and calculated on an annual basis.

(7) Article 4 of the Annex has effect with the omission of the following provisions—

(a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts),

(b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods), and

(c) paragraph 3 (genuine estimate in case of newly established enterprise).

173 Meaning of "qualifying territory" and "non-qualifying territory"

(1) In section 167(3)—

"non-qualifying territory" means any territory which is not a qualifying territory, and

"qualifying territory" means—

(a) the United Kingdom, or

(b) any territory in relation to which condition A or condition B is met.

(2) Condition A is that—

(a) double taxation arrangements have been made in relation to the territory,

(b) the arrangements include a non-discrimination provision, and

(c) the territory is not designated as a non-qualifying territory for the purposes of this subsection in regulations made by the Treasury.

(3) Condition B is that—

(a) double taxation arrangements have been made in relation to the territory, and

(b) the territory is designated as a qualifying territory for the purposes of this subsection in regulations made by the Treasury.

(4) For the purposes of subsection (2)(b) a "non-discrimination provision", in relation to any double taxation arrangements, is a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In subsection (4) "national", in relation to a state, includes—

(a) any individual possessing the nationality or citizenship of the state, and

(b) any legal person, partnership or association deriving its status as such from the law in force in that state.

(6) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

(7) Regulations under this section may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

CHAPTER 4

POSITION, IF ONLY ONE AFFECTED PERSON POTENTIALLY ADVANTAGED, OF OTHER AFFECTED PERSON

Claim by affected person who is not advantaged

174 Claim by the affected person who is not potentially advantaged

(1) Subsection (2) applies if—

(a) only one of the affected persons (in this Chapter called "the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and

(b) the other affected person (in this Chapter called "the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(2) On the making of a claim by the disadvantaged person—

(a) the profits and losses of the disadvantaged person are to be calculated for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision, and

(b) despite any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments are to be made in the disadvantaged person's case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.

(3) Provision about claims under this section is made by—

section 175 (claim not allowed in some cases where actual provision relates to a security issued by one of the affected persons),

section 176 (claim cannot be made unless advantaged person has made return on the basis that the arm's length provision applies),

section 177 (when claim may be made or amended), and

sections 181 to 184 (option to make claims in accordance with section 182 in some cases where actual provision relates to a security issued by one of the affected persons).

(4) Subsection (2) has effect subject to—

section 180 (closing trading stock and closing work in progress in a trade),

sections 188 and 189 (effect of claims under this section on double taxation relief),

Chapter 5 (provision, where liabilities of an affected person under securities issued by that person are guaranteed, for attribution to guarantor of things done by that affected person),

section 447(5) and (6) of CTA 2009 (this Part generally does not affect how exchange gains or losses from loan relationships are accounted for), and

section 694(8) and (9) of CTA 2009 (this Part generally does not affect how exchange gains or losses from derivative contracts are accounted for).

175 Claims under section 174 where actual provision relates to a security

(1) A claim under section 174 may not be made if—

(a) the participation condition (see section 148) would not be satisfied but for section 161 or 162,

(b) the actual provision is provision in relation to a security issued by one of the affected persons ("the issuer"), and

(c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.

(2) For the purposes of subsection (1), one person ("A") has a "participatory relationship" with another ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

(3) In subsections (1)(b) and (4)(a) "security" includes securities not creating or evidencing a charge on assets.

(4) For the purposes of subsection (1)(b), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

(5) The reference in subsection (1)(c) to a guarantee includes—

(a) a reference to a surety, and

(b) if the issuer is a company, a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuer has a reasonable expectation that in the event of a default by the issuer the person will be paid by, or out of the assets of, one or more companies.

176 Claims under section 174: advantaged person must have made return

(1) A claim may not be made under section 174 unless a calculation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision.

(2) A claim made under section 174 must be consistent with the calculation made on that basis in the case of the advantaged person.

(3) For the purposes of subsections (1) and (2), a calculation is to be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if (and only if)—

(a) the calculations made for the purposes of any return by the advantaged person have been made on that basis because of this Part, or

(b) a relevant notice (see section 190) given to the advantaged person takes account of a determination in pursuance of this Part of an amount to be brought into account for tax purposes on that basis.

177 Time for making, or amending, claim under section 174

(1) A claim under section 174 can be made only in the period mentioned in subsection (2) or (3).

(2) If a return has been made by the advantaged person on the basis mentioned in section 176(1), the period is the two years beginning with the day of the making of the return.

(3) If a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) has been given to the advantaged person, the period is the two years beginning with the day on which that notice was given.

(4) Subsection (5) applies if—

(a) a claim under section 174 is made in relation to a return made on the basis mentioned in section 176(1), and

(b) a relevant notice taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.

(5) The disadvantaged person is entitled, within the period mentioned in subsection (3), to make any such amendment of the claim as may be appropriate in consequence of the determination contained in the relevant notice.

(6) Subsections (1) and (5) have effect subject to section 186(3) (which provides for the extension of the period for making or amending a claim).

178 Meaning of "return" in sections 176 and 177

(1) In sections 176 and 177 "return" means—

(a) any return required to be made under TMA 1970 or under Schedule 18 to FA 1998 for income tax or corporation tax purposes, or

(b) any voluntary amendment of a return within paragraph (a).

(2) In subsection (1)(b) "voluntary amendment" means—

(a) an amendment under section 9ZA or 12ABA of TMA 1970 (amendment of personal, trustee or partnership return by taxpayer), or

(b) an amendment under Schedule 18 to FA 1998 other than one made in response to the giving of a relevant notice (see section 190).

Claims: special cases

179 Compensating payment if advantaged person is controlled foreign company

(1) Subsection (2) applies if—

(a) the actual provision is provision made or imposed in relation to a controlled foreign company,

(b) in determining for the purposes of Chapter 4 of Part 17 of ICTA the amount of that company's chargeable profits for an accounting period, its profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,

(c) the whole of those chargeable profits are to be apportioned under section 747(3) of ICTA to one or more companies resident in the United Kingdom, and

(d) tax is chargeable under section 747(4) of ICTA in respect of the whole of those chargeable profits, as so apportioned to those companies.

(2) Sections 174 to 178 have effect as if the controlled foreign company were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In applying sections 174 to 178 in a case in which they apply because of subsection (2)—

(a) references to the advantaged person in sections 176(3)(a) and (b) and 177(2), (3) and (4)(b) include a reference to any of the companies mentioned in subsection (1)(c), and

(b) references to corporation tax include a reference to tax chargeable under section 747(4) of ICTA.

(4) In this section—

"controlled foreign company" has the same meaning as in Chapter 4 of Part 17 of ICTA, and

"accounting period", in relation to a controlled foreign company, has the same meaning as in that Chapter.

180 Application of section 174(2)(a) in relation to transfers of trading stock etc

(1) Section 174(2)(a) does not affect the credits to be brought into account by the disadvantaged person in respect of—

(a) closing trading stock, or

(b) closing work in progress in a trade,

for accounting periods ending on or after the day given by subsection (2).

(2) That day is the last day of the accounting period of the advantaged person in which the actual provision was made or imposed.

(3) For the purposes of this section "trading stock", in relation to any trade, has the meaning given by—

(a) section 174 of ITTOIA 2005, or

(b) section 163 of CTA 2009.

Alternative way of claiming if a security is involved

181 Section 182 applies to claims where actual provision relates to a security

(1) Subsection (2) applies if—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies.

(2) A claim under section 174 may be made in accordance with section 182.

(3) For the purposes of this Part, a "section 182 claim" is a claim under section 174 made in accordance with section 182.

(4) In subsections (1)(b) and (5)(a) "security" includes securities not creating or evidencing a charge on assets.

(5) For the purposes of subsection (1)(b), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and references to a security are to be read accordingly.

182 Making of section 182 claims

(1) A section 182 claim may be made by—

(a) the disadvantaged person, or

(b) the advantaged person.

(2) A section 182 claim made by the advantaged person is to be taken to be made on behalf of the disadvantaged person.

(3) A section 182 claim may be made before or after a calculation within section 176(1) has been made.

(4) A section 182 claim must be made either—

(a) at any time before the end of the period mentioned in section 177(2), or

(b) within the period mentioned in section 177(3).

(5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making a claim).

183 Giving effect to section 182 claims

(1) A section 182 claim is not a claim within paragraph 57 or 58 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters).

(2) Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to TMA 1970) has effect in relation to a section 182 claim.

(3) If—

(a) a section 182 claim is made before a calculation within section 176(1) has been made,

(b) such a calculation is subsequently made, and

(c) the claim is not consistent with the calculation,

the affected persons are to be treated as if (instead of the claim actually made) a claim had been made that was consistent with the calculation.

(4) All such adjustments are to be made (including by the making of assessments) as are required to give effect to subsection (3).

(5) Subsection (4) has effect despite any limit on the time within which any adjustment may be made.

184 Amending a section 182 claim if it is followed by relevant notice

(1) Subsection (2) applies if—

(a) a section 182 claim is made,

(b) a return is subsequently made by the advantaged person on the basis mentioned in section 176(1), and

(c) a relevant notice (see section 190) taking account of such a determination as is mentioned in section 176(3)(b) is subsequently given to the advantaged person.

(2) If any amendment of the claim is appropriate in consequence of the determination contained in the relevant notice, the amendment may be made by—

(a) the disadvantaged person, or

(b) the advantaged person.

(3) If an amendment under subsection (2) is made by the advantaged person it is to be taken to be made on behalf of the disadvantaged person.

(4) Any amendment under subsection (2) must be made within the period mentioned in section 177(3).

(5) Subsection (4) has effect subject to section 186(3) (which provides for the extension of the period for making an amendment).

Notification to persons who may be disadvantaged

185 Notice to potential claimants

(1) Subsection (2) applies if—

(a) a relevant notice (see section 190) is given to any person,

(b) the notice, or anything contained in it, takes account of a transfer-pricing determination, and

(c) it appears to an officer that there is a person ("DP") who is or may be a disadvantaged person by reference to the subject-matter of the determination.

(2) The officer must give to DP a notice containing particulars of the determination.

(3) A contravention of subsection (2) does not affect the validity—

(a) of the relevant notice, or

(b) of any determination to which the notice relates.

(4) For the purposes of this section, a person is a disadvantaged person by reference to the subject-matter of a transfer-pricing determination if (and only if) the person—

(a) is entitled, in consequence of the making of the determination, to make or amend a claim under section 174, or

(b) will be entitled, because of section 212(3), to be a party to any proceedings on an appeal relating to the determination.

(5) In this section—

"officer" means officer of Revenue and Customs, and

"transfer-pricing determination" means a determination of an amount that is to be brought into account for tax purposes in respect of—

(a) any assumption made under section 147(3) or (5), or

(b) any advance-pricing-agreement assumptions (see section 222(6)).

186 Extending claim period if notice under section 185 not given or given late

(1) If there is a contravention of section 185(2), the Commissioners must consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim under section 174.

(2) Subsection (3) applies if—

(a) there is a contravention of section 185(2), or

(b) a notice required by section 185(2) is given after the relevant notice concerned.

(3) The Commissioners may, if they think fit, treat the period for the making or amendment of a claim under section 174 in the case concerned as extended by such further period as appears to them to be appropriate.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

Treatment of interest where claim made

187 Tax treatment if actual interest exceeds arm's length interest

(1) Subsection (6) applies if the following conditions are met.

(2) Condition A is that interest is paid by any person under the actual provision.

(3) Condition B is that section 147(3) or (5) applies in relation to the actual provision.

(4) Condition C is—

(a) that the amount ("ALINT") of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision, or

(b) that there would not have been any interest payable under the arm's length provision (so that ALINT is nil).

(5) Condition D is that the person receiving the interest paid under the actual provision makes—

(a) a claim under section 174, or

(b) a section 182 claim.

(6) The interest paid under the actual provision, so far as it exceeds ALINT—

(a) is not to be regarded as chargeable under Chapter 2 of Part 4 of ITTOIA 2005,

(b) is not subject to the provisions of Part 15 of ITA 2007 (deduction of income tax at source), and

(c) is not required to be brought into account under Part 5 of CTA 2009 (loan relationships) as a non-trading credit.

Adjustment of double taxation relief where claim made

188 Double taxation relief by way of credit for foreign tax

(1) Subsection (2) applies if—

(a) a claim is made under section 174, and

(b) the disadvantaged person ("DP") is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision.

(2) Assumptions A and B are to be made in DP's case in relation to any credit for foreign tax which DP has been, or may be, given—

(a) under any double taxation arrangements, or

(b) under section 18(1)(b) and (2) (relief under unilateral relief arrangements).

(3) Subsection (2) has effect subject to section 189(2).

(4) Assumption A is that the foreign tax paid or payable by DP does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision.

(5) Assumption B is that the amount of DP's relevant profits in respect of which DP is given credit for foreign tax does not include the amount (if any) by which DP's relevant profits are treated as reduced in accordance with section 174.

(6) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—

(a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and

(b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

(7) In subsection (5) "DP's relevant profits" means the profits arising to DP from the carrying on of the relevant activities (see section 216).

(8) In this section—

"double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom), and

"foreign tax" means—

(a) any tax under the law of a territory outside the United Kingdom, or

(b) any amount that, for the purposes of any double taxation arrangements, is to be treated as if it were tax under the law of a territory outside the United Kingdom.

(9) In determining for the purposes of this section whether a person is—

(a) under any double taxation arrangements, or

(b) under section 18(1)(b) and (2),

to be given credit for foreign tax, ignore any requirement that a claim is made before such a credit is given.

189 Double taxation relief by way of deduction for foreign tax

(1) Subsection (2) applies if—

(a) a claim is made under section 174,

(b) the disadvantaged person ("DP") is entitled on that claim to make a calculation, or to have an adjustment made, on the basis that the arm's length provision was made or imposed instead of the actual provision,

(c) the application of that basis in the calculation of DP's profits or losses for any chargeable period involves a reduction in the amount of any income, and

(d) that income is also income that is to be reduced in accordance with section 112(1) (deduction for foreign tax where no credit allowed).

(2) If this subsection applies—

(a) the reduction mentioned in subsection (1)(c) is to be treated as made before any reduction under section 112(1), and

(b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in subsection (1)(c) is to be disregarded for the purposes of section 112(1).

(3) If any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this section—

(a) it may be made by setting the amount of the adjustment against any relief or repayment to which DP is entitled in pursuance of DP's claim under section 174, and

(b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended prevents that adjustment from being so made.

Interpretation of Chapter

190 Meaning of "relevant notice"

In this Chapter "relevant notice" means—

(a) a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,

(b) a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,

(c) a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,

(d) a notice under section 30B(1) of TMA 1970 amending a partnership return,

(e) a notice of an assessment under section 29 of TMA 1970,

(f) a notice of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), or

(g) a notice of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

CHAPTER 5

POSITION OF GUARANTOR OF AFFECTED PERSON'S LIABILITIES UNDER A SECURITY ISSUED BY THE PERSON

191 When sections 192 to 194 apply

(1) Sections 192 to 194 apply if—

(a) one of the affected persons ("the issuing company") is a company that has liabilities under a security issued by it,

(b) those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company"),

(c) in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5), and

(d) that reduction is required because of section 153.

(2) In subsections (1)(a) and (3)(a) "security" includes securities not creating or evidencing a charge on assets.

(3) For the purposes of subsection (1)(a), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (1)(a) to a security is to be read accordingly.

(4) In subsection (1)(b) the reference to a guarantee includes—

(a) a reference to a surety, and

(b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

(5) In this Chapter—

"the guarantor company" has the meaning given by subsection (1)(b),

"the issuing company" has the meaning given by subsection (1)(a), and

"the security" means the security mentioned in subsection (1)(a).

192 Attribution to guarantor company of things done by issuing company

(1) On the making of a claim, the guarantor company is, to the extent of the reduction mentioned in section 191(1)(c), to be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

(a) had issued the security,

(b) owed the liabilities under it, and

(c) had paid any interest or other amounts paid under it by the issuing company.

(2) Subsection (1) is subject to subsection (3).

(3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person), TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies because of subsection (1), and

TR is the total amount of the reductions within section 191(1)(c).

(4) Provision about claims under subsection (1) is made by—

section 193 (interaction between claims under subsection (1) and claims under section 174), and

section 194 (general provision about claims under subsection (1)).

(5) In subsection (1) "the Taxes Acts" has the meaning given by section 118(1) of TMA 1970.

(6) In subsection (3) any reference to a guarantee includes—

(a) a reference to a surety, and

(b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

193 Interaction between claims under sections 174 and 192(1)

(1) In this section "the loan provision" means the actual provision made or imposed between—

(a) the issuing company, and

(b) another company ("the lending company"),

which is provision in relation to the security.

(2) Subsections (3) and (4) apply if—

(a) the guarantor company makes a claim under section 192(1), and

(b) the lending company makes a claim under section 174 in relation to the loan provision.

(3) In determining the arm's length provision for the purposes of section 174(2)(a) in relation to the lending company's claim, additional amounts are to be brought into account as credits corresponding to the debits that fall to be brought into account by the guarantor company because of section 192(1).

(4) If—

(a) the lending company makes its claim under section 174 before the guarantor company makes its claim under section 192(1), and

(b) the calculation on which the lending company's claim is based does not comply with subsection (3),

the guarantor company's claim is to be disallowed.

194 Claims under section 192(1): general provisions

(1) A claim under section 192(1) may be made—

(a) by the guarantor company,

(b) if there are two or more guarantor companies, by those companies acting together, or

(c) by the issuing company.

(2) A claim made under section 192(1) by the issuing company is to be taken to be made on behalf of the guarantor company or companies.

(3) Sections 175 to 177 apply in relation to a claim under section 192(1) made by or on behalf of any person or persons as they apply in relation to a claim under section 174 made by the disadvantaged person, but taking—

(a) references in sections 176 and 177 to the advantaged person as references to the issuing company, and

(b) the reference in section 177 to the disadvantaged person as a reference to the guarantor company or companies.

CHAPTER 6

BALANCING PAYMENTS

195 Qualifying conditions for purposes of section 196

(1) Conditions A to D are "the qualifying conditions" for the purposes of section 196.

(2) Condition A is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(3) Condition B is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(4) Condition C is that—

(a) a payment (the "balancing payment") is made, or

(b) two or more payments (the "balancing payments") are made,

to the advantaged person by the disadvantaged person.

(5) Condition D is that the sole or main reason for making that payment or those payments is that section 147(3) or (5) applies.

196 Balancing payments between affected persons: no charge to, or relief from, tax

(1) If each of the qualifying conditions (see section 195) is met, subsection (2) applies—

(a) to the balancing payment if, or so far as, its amount does not exceed the available compensating adjustment, or

(b) to the balancing payments if, or so far as, their total amount does not exceed the available compensating adjustment.

(2) Any payment to which this subsection applies—

(a) is not to be taken into account in calculating profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and

(b) is not for any purpose of the Corporation Tax Acts to be regarded as a distribution.

(3) In subsection (1) "the available compensating adjustment" means the difference between PL1 and PL2 where—

PL1 is the profits and losses of the disadvantaged person calculated for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as (or as they would be) calculated for tax purposes on a claim under section 174.

(4) For the purposes of subsection (3), take PL1 or PL2—

(a) as a positive amount if it is an amount of profits, and

(b) as a negative amount if it is an amount of losses.

(5) In this section, the following expressions have the meaning given by section 195—

"the balancing payment" and "the balancing payments", and

"the disadvantaged person".

197 Qualifying conditions for purposes of section 198

(1) Conditions A to F are the qualifying conditions for the purposes of section 198.

(2) Condition A is that one of the affected persons ("the issuing company") is a company that has liabilities under a security issued by it.

(3) Condition B is that those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company").

(4) Condition C is that, in calculating the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security are required to be reduced (whether or not to nil) under section 147(3) or (5).

(5) Condition D is that that reduction is required because of section 153.

(6) Condition E is that—

(a) a payment (the "balancing payment") is made, or

(b) two or more payments (the "balancing payments") are made,

by the guarantor company to the issuing company.

(7) Condition F is that the sole or main reasons for making that payment or those payments are—

(a) that section 147(3) or (5) applies because of section 153, or

(b) that sections 192 to 194 apply.

(8) In subsections (2) and (9)(a) "security" includes securities not creating or evidencing a charge on assets.

(9) For the purposes of subsection (2), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (2) to a security is to be read accordingly.

(10) In subsection (3) the reference to a guarantee includes—

(a) a reference to a surety, and

(b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

198 Balancing payments by guarantor to issuer: no charge to, or relief from, tax

(1) If each of the qualifying conditions (see section 197) is met, subsection (2) applies to the balancing payments made by all of the guarantor companies if, or so far as, the total amount of those payments does not exceed the total amount of the reductions within section 197(4).

(2) Payments to which this subsection applies—

(a) are not to be taken into account in calculating for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and

(b) are not for any purpose of the Corporation Tax Acts to be regarded as distributions.

(3) In this section, the following expressions have the meaning given by section 197—

"the balancing payments",

"the guarantor company", and

"the issuing company".

199 Pre-conditions for making election under section 200

(1) Conditions A to E are the pre-conditions for the purposes of section 200.

(2) Condition A is that both of the affected persons are companies.

(3) Condition B is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(4) Condition C is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(5) Condition D is that the actual provision is provision in relation to a security (the "relevant security").

(6) Condition E is that the capital market condition is met (see section 204).

(7) In subsections (5) and (8)(a) "security" includes securities not creating or evidencing a charge on assets.

(8) For the purposes of subsection (5), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.

200 Election to pay tax rather than make balancing payments

(1) If each of the pre-conditions (see section 199) is met, the disadvantaged person may make an election—

(a) to make no balancing payment within section 196 to the advantaged person in connection with section 147(3) or (5) applying because of section 152 in relation to the relevant security in a chargeable period, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 152 in relation to the relevant security.

(2) Section 203 contains provision about the making and effect of elections under this section.

(3) In this section, the following expressions have the meaning given by section 199—

"the advantaged person",

"the disadvantaged person", and

"the relevant security".

201 Pre-conditions for making election under section 202

(1) Conditions A to E are the pre-conditions for the purposes of section 202.

(2) Condition A is that both of the affected persons are companies.

(3) Condition B is that only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision.

(4) Condition C is that the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(5) Condition D is that the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security ("the relevant security") by one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by the other affected person.

(6) Condition E is that the capital market condition is met (see section 204).

(7) In subsections (5) and (8)(a) "security" includes securities not creating or evidencing a charge on assets.

(8) For the purposes of subsection (5), any—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

is to be treated as if payable or given in respect of a security issued for the advance by the company, and the reference in subsection (5) to a security is to be read accordingly.

(9) In subsection (5) the reference to a guarantee includes—

(a) a reference to a surety, and

(b) a reference to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company the person will be paid by, or out of the assets of, one or more companies.

202 Election, in guarantee case, to pay tax rather than make balancing payments

(1) If each of the pre-conditions (see section 201) is met, the disadvantaged person may make an election—

(a) to make no balancing payment within section 198 to the advantaged person in connection with section 147(3) or (5) applying because of section 153 in relation to the relevant security in a chargeable period, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from section 147(3) or (5) applying because of section 153 in relation to the relevant security.

(2) Section 203 contains provision about the making and effect of elections under this section.

(3) In this section, the following expressions have the meaning given by section 201—

"the advantaged person",

"the disadvantaged person", and

"the relevant security".

203 Elections under section 200 or 202

(1) In this section "election" means election under section 200 or 202.

(2) An election must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued.

(3) An election is irrevocable.

(4) An election has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods.

(5) An election is of no effect if the Commissioners for Her Majesty's Revenue and Customs give the disadvantaged person a notice refusing to accept the election.

(6) A notice under subsection (5) may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.

(Paragraph 24 of Schedule 18 to FA 1998 makes provision about notices of enquiry in respect of company tax returns.)

(7) If an election has effect in relation to an accounting period of the advantaged person, the tax mentioned in subsection (1)(b) of the section under which the election is made—

(a) is recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and

(b) is not recoverable from the advantaged person.

(8) In this section—

"the advantaged person", "the disadvantaged person" and "the relevant security"—

(a) in relation to an election under section 200, have the meaning given by section 199, and

(b) in relation to an election under section 202, have the meaning given by section 201, and

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.

(9) For the purposes of subsections (2) and (4), if the relevant security was issued in a chargeable period beginning before 1st April 2004 it is to be treated as if it had been issued in the chargeable period beginning on that date.

204 Meaning of "capital market condition" in sections 199 and 201

(1) For the purposes of section 199(6) or 201(6), the capital market condition is met if—

(a) the actual provision forms part of a capital market arrangement,

(b) the capital market arrangement involves the issue of a capital market investment,

(c) the securities that represent the capital market investment are issued wholly or mainly to independent persons, and

(d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.

(2) 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),

"capital market investment" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act), and

"independent person" means a person—

(a) who is not the disadvantaged person, and

(b) who does not have a participatory relationship with either of the affected persons.

(3) In subsection (2) "the disadvantaged person"—

(a) for the purposes of the application of this section in relation to section 199(6) has the meaning given by section 199(4), and

(b) for the purposes of the application of this section in relation to section 201(6) has the meaning given by section 201(4).

(4) For the purposes of subsection (2), a person ("A") who is a company has a "participatory relationship" with one of the affected persons ("B") if—

(a) one of A and B is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of A and B.

CHAPTER 7

OIL-RELATED RING-FENCE TRADES

205 Provision made or imposed between ring-fence trade and other activities

(1) Subsections (2) to (4) apply if—

(a) a person carries on an oil-related ring-fence trade (see section 206), and

(b) any provision is made or imposed by the person as between—

(i) the oil-related ring-fence trade, and

(ii) any other activities carried on by the person.

(2) Chapters 1 and 3 to 6 (read in accordance with Chapters 2 and 8) apply in relation to the provision as if—

(a) the oil-related ring-fence trade, and the person's other activities, were carried on by two different persons,

(b) the provision were made or imposed as between those two persons by means of a transaction,

(c) those two persons were both controlled by the same person at the time when the provision was made or imposed, and

(d) a potential advantage in relation to United Kingdom taxation were conferred by the provision on each of those two persons.

(3) Subsection (2) has effect subject to subsection (4).

(4) Chapters 1 and 3 to 6 apply in relation to the provision only if the effect of their applying is—

(a) that a larger amount is taken for tax purposes to be the amount of the profits of the oil-related ring-fence trade for any chargeable period, or

(b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of the oil-related ring-fence trade.

(5) In subsection (4)(a), the reference to a larger amount includes, if there would not otherwise have been profits, an amount of more than nil.

206 Meaning of "oil-related ring-fence trade" in sections 205 and 218

(1) This section has effect for the interpretation of—

(a) section 205, and

(b) in Part 5, section 218(2)(f).

(2) Activities carried on by a person are an "oil-related ring-fence trade" carried on by that person if subsection (3) or (4) applies to the activities.

(3) This subsection applies to the activities if—

(a) they are carried on by the person as part of a trade, and

(b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 (oil-related activities), they are treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

(4) This subsection applies to the activities if—

(a) they are carried on by the person as a trade, and

(b) in accordance with section 16(1) of ITTOIA 2005 or section 279 of CTA 2010 they would, if the person did carry on any other activities as part of the trade, be treated for any tax purposes as a separate trade distinct from all other activities carried on by the person as part of the trade.

CHAPTER 8

SUPPLEMENTARY PROVISIONS AND INTERPRETATION OF PART

Unit trusts

207 Application of Part to unit trusts

(1) This Part has effect as follows.

(2) As if a unit trust scheme were a company that is a body corporate.

(3) As if the rights of the unit holders under a unit trust scheme were shares in the company that the scheme is deemed to be.

(4) As if rights and powers of a person in the capacity of a person entitled to act for the purposes of a unit trust scheme were rights and powers of the scheme.

(5) As if provision made or imposed as between—

(a) a person in the capacity of a person entitled to act for the purposes of a unit trust scheme, and

(b) another person,

were made or imposed as between the scheme and that other person.

Determinations requiring Commissioners' sanction

208 The determinations which require the Commissioners' sanction

(1) A determination requires the Commissioners' sanction if it—

(a) is a transfer-pricing determination made for any of the specified purposes, and

(b) is not excepted by section 209 from the requirement for the Commissioners' sanction.

(2) In subsection (1) "transfer-pricing determination" means a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5).

(3) For the purposes of subsection (1), each of the following is a specified purpose—

(a) the giving of a closure notice under section 28A(1) of TMA 1970 in relation to an enquiry into a return under section 8 or 8A of TMA 1970,

(b) the giving of a closure notice under section 28B(1) of TMA 1970 in relation to an enquiry into a partnership return,

(c) the giving of a closure notice under paragraph 32 of Schedule 18 to FA 1998 in relation to an enquiry into a company tax return,

(d) the giving of a notice under section 30B(1) of TMA 1970 amending a partnership return,

(e) the making of an assessment under section 29 of TMA 1970,

(f) the making of a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 of that Schedule), and

(g) the making of a discovery determination under paragraph 41 of Schedule 18 to FA 1998.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

209 Determinations exempt from requirement for Commissioners' sanction

(1) A transfer-pricing determination made for a purpose specified in section 208(3) ("the specified purpose") does not require the Commissioners' sanction if—

(a) an agreement about the matters to which the determination relates has been made between an officer and the person in whose case the determination is made,

(b) the agreement is in force at the relevant time, and

(c) the matters to which the agreement relates include the amount determined by the transfer-pricing determination.

(2) For the purposes of subsection (1)(b)—

(a) if the specified purpose is within section 208(3)(a) to (d), "the relevant time" is when the notice is given,

(b) if the specified purpose is within section 208(3)(e) or (f), "the relevant time" is when any notice of the assessment is given, and

(c) if the specified purpose is within section 208(3)(g), "the relevant time" is when any notice of the discovery determination is given.

(3) For the purposes of subsection (1)(b), an agreement made between an officer and any person in relation to any matter is "in force" at any time if (and only if)—

(a) the agreement is one that has been made or confirmed in writing,

(b) that time is after the end of the cooling-off period, and

(c) the person has not, before the end of the cooling-off period, served a notice on an officer stating that the person is repudiating or resiling from the agreement.

(4) In subsection (3) "the cooling-off period" means—

(a) if the agreement is made in writing, the 30 days beginning with the day when the agreement is made, and

(b) in any other case, the 30 days beginning with the day when the agreement is confirmed in writing.

(5) For the purposes of subsections (3) and (4), an agreement made between an officer and any person is "confirmed in writing" if an officer serves on the person a notice in writing—

(a) stating that the agreement has been made, and

(b) setting out the terms of the agreement.

(6) In this section—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"officer" means officer of Revenue and Customs, and

"transfer-pricing determination" has the meaning given by section 208(2).

210 The requirement for the Commissioners' sanction

(1) Subsection (2) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(a) to (d) if, under section 208(1), the determination requires the Commissioners' sanction.

(2) If the closure notice, or notice under section 30B(1) of TMA 1970, is given to a person—

(a) without the determination, so far as it is taken into account in the notice, having been approved by the Commissioners, or

(b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,

the notice has effect as if given in the terms (if any) in which it would have been given had the determination not been taken into account.

(3) Subsection (4) applies in relation to a transfer-pricing determination made for a purpose specified in section 208(3)(e) to (g) if, under section 208(1), the transfer-pricing determination requires the Commissioners' sanction.

(4) If notice of the assessment, or notice of the discovery determination, is given to a person—

(a) without the transfer-pricing determination, so far as it is taken into account in the assessment or discovery determination, having been approved by the Commissioners, or

(b) without a copy of the Commissioners' approval having been served on the person at or before the time when the notice is given to the person,

the assessment or discovery determination has effect as if made (and notified) in the terms (if any) in which it would have been made had the transfer-pricing determination not been taken into account.

(5) For the purposes of subsections (2) and (4), the Commissioners' approval of a transfer-pricing determination requiring their sanction—

(a) must be given specifically in relation to the case concerned and must apply to the amount determined, but

(b) subject to that, may be given by the Commissioners (either before or after the determination is made) in any such form or manner as the Commissioners may determine.

(6) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

211 Restriction of right to appeal against Commissioners' approval

(1) In subsection (2)—

"appeal" means an appeal by virtue of any provision of—

(a) TMA 1970, or

(b) Schedule 18 to FA 1998 (company tax returns and related matters), and

"approved determination" means a determination that, for the purposes of section 210(2) or (4), has been approved by the Commissioners.

(2) The matters that may be questioned on so much of an appeal as relates to an approved determination do not include the Commissioners' approval.

(3) Subsection (2) does not apply so far as the grounds for questioning the approval are the same as the grounds for questioning the determination.

(4) In this section "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

Appeals

212 Appeals

(1) The appeals within this subsection are—

(a) an appeal under section 31 of, or Schedule 1A to, TMA 1970,

(b) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company's return, and

(c) an appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.

(2) Subsection (3) applies so far as the question in dispute on an appeal within subsection (1)—

(a) is or involves a determination of whether this Part has effect, and

(b) relates to any provision made or imposed as between two persons each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities (see section 216).

(3) If this subsection applies—

(a) each of the persons as between whom the actual provision was made or imposed is entitled to be a party in any proceedings,

(b) the tribunal is to determine the question separately from any other question in the proceedings, and

(c) the tribunal's determination on the question has effect as if made in an appeal to which each of those persons was a party.

(4) In subsection (1)(c)—

"discovery assessment" means a discovery assessment under paragraph 41 of Schedule 18 to FA 1998 (which includes a discovery assessment under that paragraph as applied by paragraph 52 that Schedule), and

"discovery determination" means a discovery determination under paragraph 41 of that Schedule.

Effect of Part on capital allowances and chargeable gains

213 Capital allowances

(1) Nothing in this Part is to be read as affecting the calculation of the amount of any capital allowance or balancing charge made under CAA 2001.

(2) Subsection (1) does not apply in relation to claims under section 174.

214 Chargeable gains

(1) Nothing in this Part is to be read as affecting the calculation in accordance with TCGA 1992 of the amount of any chargeable gain or allowable loss.

(2) Nothing in this Part requires the profits and losses of any person to be calculated for tax purposes as if, in the person's case, instead of income or losses to be brought into account in connection with the taxation of income, there were gains or losses to be brought into account in accordance with TCGA 1992.

(3) Subsections (1) and (2) do not apply in relation to claims under section 174.

Adjustments

215 Manner of making adjustments to give effect to Part

Any adjustments required to be made under this Part may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

Definitions

216 Meaning of "the relevant activities"

(1) In this Part "the relevant activities", in relation to a person ("A") who is one of the persons as between whom any provision is made or imposed, means activities that—

(a) are within subsection (2), and

(b) are not within subsection (3).

(2) The activities within this subsection are those of A's activities that comprise the activities in the course of which, or with respect to which, that provision is made or imposed.

(3) The activities within this subsection are any of A's activities carried on—

(a) separately from the activities mentioned in subsection (2), or

(b) for the purposes of a different part of A's business.

217 Meaning of "control" and "firm"

(1) References in this Part to a person controlling a body corporate or firm are to be read in accordance with section 1124 of CTA 2010.

(2) Subsection (1) has effect subject to subsection (4) and section 205(2).

(3) Subsection (4) applies if—

(a) the actual provision is made or imposed by or in relation to a sale of oil,

(b) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company ("the producer") which, although it may be the seller, is not the buyer, and

(c) at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier, at least 20% of the producer's ordinary share capital is owned directly or indirectly by one or more of the buyer and the companies (if any) that are linked to the buyer.

(4) If this subsection applies, this Part has effect in relation to the actual provision as if—

(a) the buyer and the seller, and

(b) the producer, if it is not the seller,

were all controlled by the same person at the time of the making or imposition of the actual provision.

(5) For the purposes of subsection (3)(c), two companies are "linked" if—

(a) one is under the control of the other, or

(b) both are under the control of the same person or persons.

(6) For the purposes of subsection (3)—

(a) any question whether ordinary share capital is owned directly or indirectly by a company is to be decided as for Chapter 3 of Part 24 of CTA 2010, and

(b) rights to extract oil are to be taken to be exercisable by a company even if they are exercisable by that company only jointly with another company or two or more other companies.

(7) In this section "oil" includes any mineral oil or relative hydrocarbon oil, as well as natural gas.

(8) In this Part persons carrying on a trade, profession or other business in partnership are referred to collectively as a "firm".

PART 5

ADVANCE PRICING AGREEMENTS

218 Meaning of "advance pricing agreement"

(1) In this Part "advance pricing agreement" means a written agreement that—

(a) is made by the Commissioners with any person ("A") as a consequence of an application by A under section 223,

(b) relates to one or more of the matters mentioned in subsection (2), and

(c) declares that it is an agreement made for the purposes of this section.

(2) Those matters are—

(a) if A is not a company, the attribution of income to a branch or agency through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,

(b) if A is a company, the attribution of income to a permanent establishment through which A has been carrying on a trade in the United Kingdom or is proposing to carry on a trade in the United Kingdom,

(c) the attribution of income to any permanent establishment of A's, wherever situated, through which A has been carrying on, or is proposing to carry on, any business,

(d) the extent to which income that has arisen or may arise to A is to be taken for any purpose to be income arising in a country or territory outside the United Kingdom,

(e) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between A and any associate (see section 219) of A's, and

(f) the treatment for tax purposes of any provision made or imposed, whether before or after the date of the agreement, as between an oil-related ring-fence trade carried on by A (see section 206) and any other activities carried on by A.

219 Meaning of "associate" in section 218(2)(e)

(1) This section applies for the purposes of section 218(2)(e).

(2) Two persons are associates in relation to provision made or imposed as between them if at the time of the making or imposition of the provision—

(a) one of them is directly or indirectly participating in the management, control or capital of the other, or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of the two persons.

(3) Two persons are also associates in relation to any provision if section 217(4) (which applies to provision made or imposed in connection with sales of oil) requires the persons to be treated as controlled by the same person at the time of the making or imposition of that provision.

(4) For the interpretation of subsection (2), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (2) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

220 Effect of agreement on party to it

(1) Subsection (2) applies if a chargeable period is one to which an advance pricing agreement relates.

(2) The Tax Acts have effect in relation to the chargeable period as if, in the case of the person with whom the Commissioners made the agreement, questions relating to the matters mentioned in section 218(2) are to be determined—

(a) in accordance with the agreement, and

(b) without reference to the provisions in accordance with which they would otherwise be determined.

(3) Subsection (2) is subject to—

subsections (4) and (5), and

section 221.

(4) A question is to be determined as mentioned in subsection (2) only so far as the agreement provides for the question to be determined in that way.

(5) In the case of so much of a question as—

(a) relates to any matter mentioned in paragraph (e) or (f) of section 218(2), and

(b) is not comprised in a question that relates to a matter within another paragraph of section 218(2),

reference to a provision is capable of being excluded under subsection (2) by an advance pricing agreement only if the provision is in Part 4.

221 Effect of revocation of agreement or breach of its conditions

(1) An advance pricing agreement does not have effect in accordance with section 220(2) in relation to any determination of a question if any of conditions A, B and C is met.

(2) Condition A is that a time to which the question relates is after a time as from which an officer has revoked the agreement in accordance with the agreement's terms.

(3) Condition B is that the question relates to a time after, or in relation to which, there has been a failure by a party to the agreement to comply with a significant provision of the agreement.

(4) Condition C is that the question relates to a matter as respects which a key condition has not been met or is no longer met.

(5) A provision of the agreement is "significant" for the purposes of subsection (3) if compliance with that provision is, under the terms of the agreement, to be a condition of the agreement's having effect.

(6) Any other condition that, under the terms of the agreement, is to be a condition of the agreement's having effect is a "key condition" for the purposes of subsection (4).

222 Effect of agreement on non-parties

(1) Subsections (2), (5) and (6) apply if—

(a) an advance pricing agreement has effect in relation to any provision ("the actual provision") made or imposed as between any person ("A") and another ("B"), and

(b) section 220(2) has the effect in A's case of requiring a question relating to the actual provision to be determined in accordance with the agreement rather than by reference to rules which would otherwise be applicable because of Part 4.

(2) The provisions mentioned in subsection (3) have effect in B's case on the assumption that any question within subsection (4) is to be determined, to the same extent as in A's case, by reference to the agreement.

(3) The provisions are—

sections 174 to 178 (transfer pricing: claim by disadvantaged person), and

sections 188 and 189 (transfer pricing: adjustment of double taxation relief if claim made).

(4) The questions are—

(a) whether A is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision, and

(b) what constitutes the arm's length provision in relation to the actual provision.

(5) Subsection (2) has effect subject to any advance pricing agreement made between the Commissioners and B.

(6) Any assumptions to be made because of the agreement are "advance-pricing-agreement assumptions" for the purposes of paragraph (b) of the definition in section 185(5) of "transfer-pricing determination".

223 Application for agreement

(1) For the purposes of section 218(1)(a), an application by a person ("A") is an application under this section if it complies with subsections (2) to (5).

(2) It must be an application to the Commissioners for the clarification by agreement of the effect in A's case of provisions by reference to which questions relating to any one or more of the matters mentioned in section 218(2) are to be, or might be, determined.

(3) It must set out A's understanding of what would in A's case be the effect, in the absence of any agreement, of the provisions in relation to which clarification is sought.

(4) It must set out the respects in which it appears to A that clarification is required in relation to those provisions.

(5) It must set out how A proposes that matters should be clarified in a manner consistent with the understanding mentioned in subsection (3).

224 Provision in agreement about years ended or begun before agreement made

(1) An advance pricing agreement may contain provision relating to chargeable periods ending before the agreement is made, subject to subsection (2).

(2) An advance pricing agreement may not contain provision relating to chargeable periods ending before 27 July 1999.

(3) If an advance pricing agreement—

(a) relates to a chargeable period beginning or ending before the agreement is made, and

(b) provides for the manner in which adjustments are to be made for tax purposes in consequence of the agreement,

the adjustments are to be made for those purposes in the manner provided for in the agreement.

225 Modification and revocation of agreement

(1) Subsection (2) applies if an advance pricing agreement provides for the modification, or revocation, of the agreement—

(a) by the Commissioners, or

(b) by an officer.

(2) The agreement may provide for the modification or revocation to take effect as from such time as the Commissioners or officer may determine.

(3) A time determined under subsection (2) may be (but need not be) a time before the modification is made or the agreement is revoked.

226 Annulment of agreement for misrepresentation

(1) Subsection (6) applies if each of conditions A to D is met.

(2) Condition A is that the Commissioners and any person ("A") have at any time purported to enter into an advance pricing agreement.

(3) Condition B is that, before that time, A fraudulently or negligently provided the Commissioners with information which was false or misleading.

(4) Condition C is that the information was so provided—

(a) for or in connection with the application to the Commissioners for the making of the agreement, or

(b) otherwise in connection with the preparation of the agreement.

(5) Condition D is that the Commissioners have notified A that the agreement is nullified by reason of the misrepresentation.

(6) The agreement is to be treated as never made.

227 Penalty for misrepresentation in connection with agreement

A person is liable to a penalty of not more than £10,000 if the person fraudulently or negligently makes a false or misleading statement to the Commissioners or an officer—

(a) for or in connection with any application to the Commissioners for them to enter into an advance pricing agreement, or

(b) otherwise in connection with the preparation of an advance pricing agreement.

228 Party to agreement: duty to provide information

A party to an advance pricing agreement must provide the Commissioners from time to time with all reports and other information that the party may be required to provide—

(a) under the agreement, or

(b) as a result of a request made by an officer in accordance with the agreement.

229 Modifications of agreement for double taxation purposes

(1) Subsection (2) applies if a mutual agreement made under and for the purposes of any double taxation arrangements is not consistent with the terms of an advance pricing agreement.

(2) The Commissioners must ensure that the advance pricing agreement is modified so far as may be necessary for enabling effect to be given to the mutual agreement in relation to the subject-matter of the advance pricing agreement.

(3) The Commissioners may comply with subsection (2) by exercising powers conferred on them by the advance pricing agreement or otherwise.

(4) In this section "double taxation arrangements" means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).

230 Interpretation of Part: meaning of "Commissioners" and "officer"

In this Part—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs, and

"officer" means an officer of Revenue and Customs.

PART 6

TAX ARBITRAGE

Introduction

231 Overview

(1) This Part provides for the service on companies of two kinds of notice, as a result of which they must calculate or recalculate their income or chargeable gains or liability to corporation tax less advantageously.

(2) Sections 232 to 248 deal with the first kind of notice ("deduction notices").

(3) In particular—

(a) see sections 232 to 235 for provisions about the service of deduction notices,

(b) see sections 236 to 242 for the kinds of schemes ("deduction schemes") involved, and

(c) see sections 243 to 248 for the consequences of such notices.

(4) Sections 249 to 254 deal with the second kind of notice ("receipt notices").

(5) In particular—

(a) see sections 249 to 253 for provisions about the service of receipt notices, and

(b) see section 254 for their consequences.

(6) Sections 255 to 257 contain general provisions about both kinds of notice.

(7) For the meaning of "scheme" etc, see section 258 (schemes and series of transactions).

Deduction notices

232 Deduction notices

(1) An officer of Revenue and Customs may give a company a notice under this section if—

(a) the company is within the charge to corporation tax, and

(b) the officer considers on reasonable grounds that each of the deduction scheme conditions is or may be met in relation to a transaction to which the company is party.

(2) In this Part—

(a) a notice under this section is referred to as a "deduction notice", and

(b) "the deduction scheme conditions" means the conditions specified in section 233.

(3) For the consequences of a deduction notice, see section 243.

233 The deduction scheme conditions

(1) This section sets out the deduction scheme conditions.

(2) Deduction scheme condition A is that the transaction to which the company is party forms part of a scheme that is a deduction scheme for the purposes of this Part (see sections 236 to 242).

(3) Deduction scheme condition B is that the scheme is such that for corporation tax purposes the company—

(a) is in a position to claim, or has claimed, an amount by way of deduction in respect of the transaction, or

(b) is in a position to set off, or has set off, an amount relating to the transaction against profits in an accounting period.

(4) Deduction scheme condition C is that the main purpose of the scheme, or one of its main purposes, is to achieve a UK tax advantage for the company.

(5) Deduction scheme condition D is that the amount of the UK tax advantage is more than minimal.

234 Schemes achieving UK tax advantage for a company

(1) For the purposes of section 233, a scheme achieves a UK tax advantage for a company if, in consequence of the scheme, the company is in a position to obtain, or has obtained—

(a) a relief or increased relief from corporation tax,

(b) a repayment or increased repayment of corporation tax, or

(c) the avoidance or reduction of a charge to corporation tax.

(2) In subsection (1)(a) "relief from corporation tax" includes a tax credit under section 1109 of CTA 2010 (tax credits for certain recipients of qualifying distributions) for the purposes of corporation tax.

(3) For the purposes of subsection (1)(c) avoidance or reduction may, in particular, be effected—

(a) by receipts accruing in such a way that the recipient does not pay or bear tax on them, or

(b) by a deduction in calculating profits or gains.

235 Further provisions about deduction notices

(1) A deduction notice must specify the transaction in relation to which the officer of Revenue and Customs considers that each of the deduction scheme conditions is or may be met.

(2) A deduction notice must specify the accounting period in relation to which the officer considers that deduction scheme condition B is or may be met in relation to the transaction.

(3) A deduction notice must inform the company to which it is given that, as a result of the service of the notice, section 243(2) to (6) (consequences of a deduction notice) will apply if each of the deduction scheme conditions is met in relation to the transaction.

(4) A deduction notice may relate to two or more transactions.

Deduction schemes

236 Schemes involving hybrid entities

(1) A scheme is a deduction scheme if a party to a transaction forming part of the scheme meets conditions A and B.

(2) Condition A is that the party is regarded as being a person under the tax law of any territory.

(3) Condition B is that the party's profits or gains are treated, for the purposes of a relevant tax imposed under the law of any territory, as the profits or gains of a person or persons other than the person mentioned in condition A.

(4) Condition B is not met just because the party's profits or gains are subject to a rule that—

(a) is similar to that in section 747(3) of ICTA (imputation of chargeable profits of controlled foreign company), and

(b) has effect under the tax law of any territory outside the United Kingdom.

(5) For the purposes of this section, the following are relevant taxes—

(a) income tax,

(b) corporation tax, and

(c) any tax of a similar character to income tax or corporation tax that is imposed by the law of a territory outside the United Kingdom.

237 Instruments of alterable character

(1) A scheme is a deduction scheme if one of the parties to the scheme is party to an instrument within subsection (2).

(2) An instrument is within this subsection if under the law of a particular territory any party to the instrument may alter its tax characteristics.

(3) The reference to altering an instrument's tax characteristics is to making an alteration which, under the law of a particular territory, has the effect of determining, for the tax purposes of that territory, whether the instrument is taken into account as giving rise—

(a) to income,

(b) to capital, or

(c) to neither.

(4) An instrument is taken into account as giving rise to capital if any gain on the disposal of the instrument—

(a) would be a chargeable gain, or

(b) would be such a gain if the person making the disposal were UK resident.

238 Shares subject to conversion

(1) A scheme is a deduction scheme if it includes—

(a) a company issuing shares subject to conversion, or

(b) such an amendment of rights attaching to shares issued by a company that the shares become shares subject to conversion.

(2) For the purposes of subsection (1)(a) a company's shares are shares subject to conversion if conditions A and B are met.

(3) For the purposes of subsection (1)(b) a company's shares are shares subject to conversion if conditions A and C are met.

(4) Condition A is that the rights attached to the shares include provision as a result of which a holder of such shares is entitled, on the occurrence of an event, to acquire securities in a company by conversion or exchange.

(5) Condition B is that at the time when the shares are issued the company could reasonably expect that event to occur.

(6) Condition C is that at the time when the rights attaching to the shares are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

239 Securities subject to conversion

(1) A scheme is a deduction scheme if it includes—

(a) a company issuing securities subject to conversion, or

(b) such an amendment of rights attaching to securities issued by a company that the securities become securities subject to conversion.

(2) For the purposes of subsection (1)(a) a company's securities are securities subject to conversion if conditions A and B are met.

(3) For the purposes of subsection (1)(b) a company's securities are securities subject to conversion if conditions A and C are met.

(4) Condition A is that the rights attached to the securities include provision as a result of which a holder of such securities is entitled, on the occurrence of an event, to acquire shares in a company by conversion or exchange.

(5) Condition B is that at the time when the securities are issued the company could reasonably expect that event to occur.

(6) Condition C is that at the time when the rights attaching to the securities are amended as described in subsection (1)(b) the company could reasonably expect that event to occur.

240 Debt instruments treated as equity

(1) A scheme is a deduction scheme if it includes a debt instrument issued by a company that is treated as equity in the company under generally accepted accounting practice.

(2) In this section "debt instrument" means an instrument issued by a company that—

(a) represents a loan relationship of the company, or

(b) would do so if the company were UK resident.

241 Scheme including issue of shares not conferring qualifying beneficial entitlement

(1) A scheme is a deduction scheme if—

(a) it includes a company issuing shares to a connected person, and

(b) the shares do not meet conditions A, B and C.

(2) Condition A is that on their issue the shares are ordinary shares that are fully paid-up.

(3) Condition B is that when the issue takes place there is no arrangement or understanding under which the rights attaching to the shares may be amended.

(4) Condition C is that, at all times in the accounting period of the company in which the issue takes place, each of the shares confers a beneficial entitlement to the appropriate proportion of—

(a) any profits available for distribution to equity holders of the company, and

(b) any assets of the company available for distribution to its equity holders on a winding-up.

(5) For the purposes of subsection (4) the appropriate proportion, in relation to a share, is the same as the proportion of the issued share capital represented by that share.

(6) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (4) as it applies for the purposes of the provisions specified in section 157(1) of that Act.

242 Scheme including transfer of rights under a security

(1) A scheme is a deduction scheme if each of conditions A to D is met.

(2) Condition A is that the scheme includes a transaction or a series of transactions under which a person ("the transferor")—

(a) transfers to one or more other persons rights to receive a payment under a security, or

(b) otherwise secures that one or more other persons are similarly benefited.

(3) A person is similarly benefited for these purposes if the person receives a payment which, but for the transaction or series of transactions, would have arisen to the transferor.

(4) Condition B is that—

(a) the transferor, and

(b) at least one of the persons to whom a transfer of rights is made or a similar benefit is secured,

are connected with each other.

(5) Condition C is that, immediately after the transfer of rights or the securing of the similar benefit, two or more persons—

(a) hold rights to receive a payment under the security, or

(b) enjoy a similar benefit.

(6) Condition D is that, immediately after the transfer of rights or the securing of the similar benefit, the market value of all the relevant benefits of such of those persons as are connected equals or exceeds the market value of all other relevant benefits.

(7) In subsection (6) "relevant benefits" means—

(a) rights to receive a payment under the security, and

(b) similar benefits.

(8) In this section "security" includes an agreement under which a person receives an annuity or other annual payment (whether it is payable annually or at shorter or longer intervals) for a term which is not contingent on the duration of a human life or lives.

Consequences of deduction notices

243 Consequences of deduction notices

(1) This section applies in relation to a transaction if—

(a) a deduction notice specifying the transaction is given to a company under section 232, and

(b) when the notice is given, each of the deduction scheme conditions is met in relation to the transaction.

(2) The company must calculate (or recalculate) its income or chargeable gains for the purposes of corporation tax, or its liability to corporation tax, for—

(a) the accounting period specified in the deduction notice, and

(b) any later accounting period.

(3) That calculation (or recalculation) must be done in accordance with—

(a) the rule in section 244 (the rule against double deduction), and

(b) the rule in section 248 (the rule against deduction for untaxable payments) if it applies (see section 245).

(4) But the company is treated as having complied with subsections (2) and (3), so far as the scheme specified in the deduction notice is concerned, if the company incorporates the necessary relevant adjustments in its company tax return for the accounting period specified in the notice.

(5) For the purposes of subsection (4), adjustments are relevant if they—

(a) treat all or part of a deduction allowable for corporation tax purposes as not being allowable, or

(b) treat all or part of an amount that for corporation tax purposes may be set off against profits in an accounting period as not falling to be set off.

(6) For the purposes of subsection (4), relevant adjustments are the necessary adjustments if—

(a) they are such adjustments as are necessary for counteracting those effects of the scheme that are referable to the purpose referred to in deduction scheme condition C (see section 233(4)), and

(b) as a result of their incorporation in the return, the company counteracts those effects.

244 The rule against double deduction

(1) The rule referred to in section 243(3)(a) is that, in respect of the transaction specified in the deduction notice, no amount is allowable as a deduction for the purposes of the Corporation Tax Acts so far as an amount is otherwise deductible or allowable in relation to the expense in question.

(2) An amount is otherwise deductible or allowable if it may be otherwise deducted or allowed in calculating the income, profits or losses of any person for the purposes of any tax to which this subsection applies.

(3) Subsection (2) applies to any tax (including any non-UK tax) other than—

(a) petroleum revenue tax, or

(b) the tax chargeable under section 330(1) of CTA 2010 (supplementary charge in respect of ring fence trades).

(4) The reference in subsection (2) to an amount being able to be otherwise deducted or allowed as mentioned in that subsection includes a reference to an amount that would be able to be so deducted or allowed but for any tax rule that has the same effect as the rule in subsection (1).

(5) In subsection (4) "tax rule" means—

(a) a provision of the Tax Acts, or

(b) a rule having effect under the tax law of any territory outside the United Kingdom.

(6) In this section "non-UK tax" has the meaning given in section 187 of CTA 2010.

245 Application of the rule against deduction for untaxable payments

(1) Section 248 (the rule against deduction for untaxable payments) applies if conditions A, B and C are met.

(2) Condition A is that a transaction that forms part of the deduction scheme, or a series of transactions that forms part of the scheme, makes or imposes provision as a result of which—

(a) one person ("the payer") makes a payment, and

(b) another person ("the payee") receives, or becomes entitled to receive, a payment or payments.

(3) Condition B is that, in respect of the payment by the payer, an amount may be deducted by, or otherwise allowed to—

(a) the payer, or

(b) another person who is party to, or concerned in, the scheme,

in calculating any profits or losses for tax purposes.

(4) Condition C is that as a result of provision made or imposed by the deduction scheme—

(a) the payee is not liable to tax—

(i) in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions, or

(ii) in respect of part of such payment or payments, or

(b) if the payee is so liable, the payee's liability to tax is reduced.

(5) In this section—

(a) "the deduction scheme" means the scheme in relation to which the deduction scheme conditions are met, and

(b) "tax purposes" includes the purposes of any non-UK tax (within the meaning of section 187 of CTA 2010).

(6) Sections 246 and 247 make further provision about condition C.

(7) Expressions used in those sections or section 248 have the same meaning as in this section.

246 Cases where payee's non-liability treated as not a result of scheme

(1) This section sets out two cases in which condition C in section 245(4) (which requires that as a result of the deduction scheme the payee is not liable to tax in respect of the whole or part of certain payments) is treated as not met.

(2) The first case is where the reason why the payee is not liable to tax is that under the tax law of any territory the payee is not liable to tax on any income or gains received by the payee or received for the payee's benefit.

(3) The second case is where, or to the extent that, the payee is not subject to tax because an exemption within subsection (4) applies.

(4) An exemption is within this subsection if—

(a) it exempts a person from being liable to tax in respect of income or gains, without providing for that income or those gains to be treated as the income or gains of another person, and

(b) it is conferred by a provision contained in, or having the force of, an Act or by a provision of the tax law of any territory outside the United Kingdom.

247 Cases where payee treated as having reduced liability as a result of scheme

(1) This section sets out two cases in which the payee's liability to tax in respect of the scheme payment is treated for the purposes of section 245(4)(b) as reduced as a result of provision made or imposed by the deduction scheme.

(2) But that does not mean that there are no other cases in which that liability is so reduced.

(3) In this section "the scheme payment" means the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions referred to in section 245(2).

(4) Case A is that an amount arising from—

(a) a transaction forming part of the scheme, or

(b) a series of such transactions,

falls to be deducted by, or otherwise allowed to, the payee in calculating for tax purposes any profits or losses arising from the scheme payment or the entitlement to receive it.

(5) Case B is that an amount of relief arising from—

(a) a transaction forming part of the scheme, or

(b) a series of such transactions,

may be deducted from the amount of income or gains arising from the scheme payment or the entitlement to receive it.

248 The rule against deduction for untaxable payments

(1) The rule referred to in section 243(3)(b) is that the total deduction amount must be reduced.

(2) In this section "the total deduction amount" means the total of the amounts allowable as a deduction for the purposes of the Corporation Tax Acts in calculating any profits arising to the company from any transaction forming part of the deduction scheme.

(3) If the payee is not liable to tax for the purposes of section 245(4) in respect of the payment or payments that the payee receives or is entitled to receive, the total deduction amount must be reduced to nil.

(4) If the payee is liable to tax for those purposes in respect of part of that payment or those payments, the total deduction amount must be reduced by the same proportion of that amount as the proportion of the payment or payments on which the payee is not liable to tax.

(5) If the payee's liability to tax is reduced as described in section 245(4)(b), the total deduction amount must be reduced by the same proportion of that amount as the reduction in the payee's liability bears to that liability before reduction.

Receipt notices

249 Receipt notices

(1) An officer of Revenue and Customs may give a company a notice under this section if—

(a) the company is UK resident, and

(b) the officer considers on reasonable grounds that each of the receipt scheme conditions is or may be met in relation to the company.

(2) In this Part—

(a) a notice under this section is referred to as a "receipt notice", and

(b) "the receipt scheme conditions" means the conditions specified in section 250.

(3) For the consequences of a receipt notice, see section 254.

250 The receipt scheme conditions

(1) This section sets out the receipt scheme conditions.

(2) Receipt scheme condition A is that a scheme makes or imposes provision as between the company and another person ("the paying party") by means of a transaction or series of transactions.

(3) Receipt scheme condition B is that that provision includes the paying party making, by means of a transaction or series of transactions, a payment—

(a) which is a qualifying payment in relation to the company, and

(b) at least part of which is not an amount to which section 251 (amounts within corporation tax) applies.

(4) A payment is a qualifying payment in relation to a company for the purposes of this section and sections 251 to 254 if it constitutes a contribution to the capital of the company.

(5) Receipt scheme condition C is that on entering into the scheme the company and the paying party expected that a benefit would arise because at least part of the qualifying payment was not an amount to which section 251 applies.

(6) Receipt scheme condition D is that there is an amount in relation to the qualifying payment that—

(a) is a deductible amount, and

(b) is not set against any scheme income arising to the paying party for income tax purposes or corporation tax purposes.

(7) In subsection (6)—

"deductible amount" means an amount that—

(a) is available as a deduction for the purposes of the Tax Acts, or

(b) may be deducted or otherwise allowed under the tax law of any territory outside the United Kingdom, and

"scheme income" means income arising from the transaction or transactions forming part of the scheme.

(8) Section 253 (exception for dealers) specifies a case where receipt scheme condition D is treated as not met.

251 Amounts within corporation tax

(1) This section applies to an amount if it falls within subsection (2) or (4).

(2) An amount is within this subsection if for the purposes of the Corporation Tax Acts it is—

(a) income or chargeable gains arising to the company in the accounting period in which the qualifying payment was made, or

(b) income arising to any other UK resident company in a corresponding accounting period.

(3) For the purposes of this section, the accounting period of one company ("the first period") corresponds to the accounting period of another company ("the second period") if at least one day of the first period falls within the second period.

(4) An amount is within this subsection if it is brought into account as a result of Chapter 2A or 6A of Part 6 of CTA 2009 (relationships treated as loan relationships: disguised interest, and shares accounted for as liabilities).

252 Further provisions about receipt notices

(1) A receipt notice must inform the company to which it is given that the officer of Revenue and Customs giving it considers that each of the receipt scheme conditions is or may be met in relation to the company.

(2) A receipt notice must specify the qualifying payment by reference to which the officer of Revenue and Customs considers receipt scheme conditions B, C and D are or may be met.

(3) A receipt notice must specify the accounting period of the company in which the qualifying payment is made.

(4) A receipt notice must inform the company that, as a result of the service of the notice, section 254(2) (rule for calculation or recalculation of income etc following receipt notice) will apply in relation to the payment if each of the receipt scheme conditions is met in relation to the company.

253 Exception for dealers

(1) Receipt scheme condition D (see section 250(6)) is treated as not met if—

(a) the paying party ("P") is a dealer,

(b) in the ordinary course of P's business, P incurs losses in respect of the transaction or transactions forming part of the scheme to which P is party, and

(c) the amount by reference to which that condition would be met, but for this section, is an amount in respect of those losses.

(2) In subsection (1) "dealer" means a person who—

(a) is charged to corporation tax under Part 3 of CTA 2009 (trading income) in respect of distributions of companies that are received in the course of a trade not consisting of insurance business, or

(b) would be so charged if UK resident.

(3) In this section "the paying party" has the same meaning as in section 250.

254 Rule for calculation or recalculation of income etc following receipt notice

(1) This section applies in relation to a qualifying payment if—

(a) a receipt notice specifying the payment is given to the company in relation to which it is a qualifying payment, and

(b) when the notice is given, each of the receipt scheme conditions is met in relation to the company.

(2) The company must calculate (or recalculate)—

(a) its income or chargeable gains for the purposes of corporation tax for the accounting period specified in the notice, or

(b) its liability to corporation tax for that period,

as if so much of the qualifying payment as falls within subsection (3) were a receipt of the company that is chargeable for that period under the charge to corporation tax on income.

(3) The qualifying payment falls within this subsection so far as—

(a) receipt scheme condition D (see section 250(6)) is met in relation to it, and

(b) it is not an amount to which section 251 (amounts within corporation tax) applies.

General provisions about deduction notices and receipt notices

255 Notices given before tax return made

(1) This section applies if an officer of Revenue and Customs gives a company a deduction notice or a receipt notice before the company has made its company tax return for the accounting period specified in the notice.

(2) If the company makes that return before the end of the period of 90 days beginning with the day on which the notice is given, it may—

(a) make a return that disregards the notice, and

(b) at any time after making the return and before the end of that 90 day period, amend the return for the purpose of complying with the provision referred to in the notice.

(3) Subsection (2)(b) does not prevent a company tax return for a period becoming incorrect if—

(a) a deduction notice or a receipt notice is given to the company in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) for the purpose of complying with the provision referred to in the notice, and

(c) it ought to have been so amended.

256 Notices given after tax return made

(1) If a company has made a company tax return for an accounting period, an officer of Revenue and Customs may only give the company a deduction notice or a receipt notice if a notice of enquiry has been given to the company in respect of the return.

(2) After any enquiries into the return have been completed, an officer of Revenue and Customs may only give the company a deduction notice or a receipt notice if conditions A and B are met.

(3) Condition A is that the officer could not have been reasonably expected to have been aware that the circumstances were such that a deduction notice or a receipt notice could have been given to the company in relation to the period.

(4) Whether condition A is met must be determined on the basis of information made available to the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs before the time the enquiries into the return were completed.

(5) Paragraph 44(2) and (3) of Schedule 18 to FA 1998 (information made available) applies for the purposes of subsection (4) as it applies for the purposes of paragraph 44(1) of that Schedule.

(6) Condition B is that—

(a) the company was requested to provide information during an enquiry into the return, and

(b) if the company had duly complied with the request, an officer of Revenue and Customs could reasonably have been expected to give the company a deduction notice or a receipt notice in relation to the period.

257 Amendments, closure notices and discovery assessments where section 256 applies

(1) Subsection (2) applies if, after having made a company tax return for an accounting period, a company is given a deduction notice or a receipt notice in relation to the period ("the Part 6 notice").

(2) The company may amend the return for the purpose of complying with the provision referred to in the Part 6 notice at any time before the end of the period of 90 days beginning with the day on which the Part 6 notice is given ("the 90 day period").

(3) Subsection (4) applies if the Part 6 notice is given to the company after it has been given a notice of enquiry in respect of the return.

(4) No closure notice may be given in relation to the return until—

(a) the end of the 90 day period, or

(b) the earlier amendment of the return for the purpose of complying with the provision referred to in the Part 6 notice.

(5) Subsection (6) applies if the Part 6 notice is given to the company after any enquiries into the return are completed.

(6) No discovery assessment may be made in respect of the income or chargeable gain to which the Part 6 notice relates until—

(a) the end of the 90 day period, or

(b) the earlier amendment of the return for the purpose of complying with the provision referred to in the Part 6 notice.

(7) Subsection (2) does not prevent a return for an accounting period becoming incorrect if—

(a) a deduction notice or receipt notice is given to the company in relation to the period,

(b) the return is not amended in accordance with subsection (2) for the purpose of complying with the provision referred to in the notice, and

(c) it ought to have been so amended.

Interpretation

258 Schemes and series of transactions

(1) In this Part "scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.

(2) In determining whether any transactions have formed or will form part of a series of transactions or scheme for the purposes of this Part, it does not matter if the parties to one of the transactions are different from the parties to another of the transactions.

(3) For the purposes of this Part, the cases in which any two or more transactions form, or form part of, a series of transactions or scheme include the cases where subsection (4) or (5) applies.

(4) This subsection applies if it would be reasonable to assume that one or more of the transactions would not have been entered into independently of the other or others.

(5) This subsection applies if it would be reasonable to assume that one or more of the transactions would not have taken the same form or been on the same terms if entered into independently of the other or others.

259 Minor definitions

(1) In this Part—

"closure notice" means a notice under paragraph 32 of Schedule 18 to FA 1998,

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of that Schedule, as read with paragraph 4 of that Schedule,

"discovery assessment" means an assessment under paragraph 41 of that Schedule,

"notice of enquiry" means a notice under paragraph 24 of that Schedule, and

"security" has the meaning given in section 1117(1) of CTA 2010, but subject to section 242(8) of this Act.

(2) Section 1122 of CTA 2010 (meaning of "connected") applies for the purposes of this Part.

PART 7

TAX TREATMENT OF FINANCING COSTS AND INCOME

CHAPTER 1

INTRODUCTION

260 Introduction

(1) Chapter 2 contains provision for determining whether this Part applies in relation to any particular period of account of the worldwide group.

(2) Chapter 3 provides for the disallowance of certain financing expenses of relevant group companies arising in a period of account of the worldwide group to which this Part applies.

The total of the amounts disallowed is the amount by which the tested expense amount (defined in Chapter 8) exceeds the available amount (defined in Chapter 9).

(3) Chapter 4 provides for the exemption from the charge to corporation tax of certain financing income of UK group companies where financing expenses of relevant group companies have been disallowed under Chapter 3.

(4) Chapter 5 provides for the exemption from the charge to corporation tax of certain intra-group financing income of UK group companies where the paying company is denied a deduction for tax purposes otherwise than under this Part.

(5) Chapter 6 contains rules connected with tax avoidance.

(6) Chapter 7 defines a "financing expense amount" and "financing income amount" of a company for a period of account of the worldwide group, which are amounts that would, apart from this Part, be brought into account for the purposes of corporation tax.

(7) Chapter 8 defines the "tested expense amount" and the "tested income amount" of the worldwide group for a period of account of the group, which are totals deriving from the financing expense amounts and financing income amounts of certain group companies.

(8) Chapter 9 defines the "available amount" for a period of account of the worldwide group, which derives from certain financing costs disclosed in the group's consolidated financial statements.

(9) Chapter 10 contains further interpretative provisions.

CHAPTER 2

APPLICATION OF PART

261 Application of Part

(1) This Part applies to any period of account of the worldwide group for which—

(a) the UK net debt of the group (see sections 262 and 263), exceeds
(b) 75% of the worldwide gross debt of the group (see section 264).

(2) But a period of account that is within subsection (1) is not a period of account to which this Part applies if the worldwide group is a qualifying financial services group in that period (see section 266).

(3) The Treasury may by order amend subsection (1)(b) by substituting a higher or lower percentage for the percentage for the time being specified there.

(4) An order under subsection (3) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

(5) An order under subsection (3) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

262 UK net debt of worldwide group for period of account of worldwide group

(1) The reference in section 261 to the "UK net debt" of the worldwide group for a period of account of the group is to the sum of the net debt amounts of each company that was a relevant group company at any time during the period.

(2) In this section "net debt amount", in relation to a company, means the average of—
(a) the net debt of the company as at that company's start date, and
(b) the net debt of the company as at that company's end date.

For the meaning of "net debt", see section 263.

(3) If the amount determined in accordance with subsection (2) is less than £3 million, the net debt amount of the company is nil.

(4) If a company is dormant (within the meaning given by section 1169 of the Companies Act 2006) at all times in the period beginning with that company's start date and ending with that company's end date, the net debt amount of the company is nil.

(5) The Treasury may by order amend subsection (3) by substituting a higher or lower amount for the amount for the time being specified there.

(6) An order under subsection (5) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

(7) An order under subsection (5) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

(8) In this Chapter—
(a) "the start date" of a company means the first day of the period of account of the worldwide group or, if later, the first day in the period on which the company was a relevant group company, and
(b) "the end date" of a company means the last day of the period of account of the worldwide group or, if earlier, the last day in the period on which the company was a relevant group company.

263 Net debt of a company

(1) References in section 262 to the "net debt" of a company as at any date are to—

(a) the sum of the company's relevant liabilities as at that date, less

(b) the sum of the company's relevant assets as at that date.

(2) The amount determined in accordance with subsection (1) may be a negative amount.

(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) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),

(b) liabilities in respect of finance leases, or

(c) amounts of such other description 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,

(b) amounts loaned (whether by way of overdraft or other short term or long term loan),

(c) net investments, or net cash investments, in finance leases,

(d) securities of Her Majesty's government or of the government of any other country or territory, or

(e) amounts of such other description as may be specified in regulations made by the Commissioners.

(5) Expressions used in subsections (3)(a) and (b) and (4)(a) to (c) have the meaning for the time being given by generally accepted accounting practice.

264 Worldwide gross debt of worldwide group for period of account of the group

(1) The reference in section 261 to the "worldwide gross debt" of the worldwide group for a period of account of the group is to the average of—

(a) the sum of the relevant liabilities of the group as at the day before the first day of the period, and

(b) the sum of the relevant liabilities of the group as at the last day of the period.

(2) For the purposes of this section, the "relevant liabilities" of the worldwide group as at any date are the amounts that are disclosed in the balance sheet of the group as at that date in respect of—

(a) amounts borrowed (whether by way of overdraft or other short term or long term borrowing),

(b) liabilities in respect of finance leases, or

(c) amounts of such other description as may be specified in regulations made by the Commissioners.

(3) Expressions used in subsection (2)(a) and (b) 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.

(4) 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.

265 References to amounts disclosed in balance sheet of relevant group company

(1) This section applies for the purpose of construing references in section 263 to amounts disclosed in the balance sheet of a relevant group company as at any date ("the relevant date").

(2) If the company—

(a) is not a foreign company, and

(b) does not draw up a balance sheet as at the relevant date,

the references are to the amounts that would be disclosed in a balance sheet of the company as at that date, were one drawn up in accordance with generally accepted accounting practice.

(3) If the company—

(a) is a foreign company, and

(b) draws up a balance sheet ("a UK permanent establishment balance sheet") as at the relevant date in respect of the company's permanent establishment in the United Kingdom that treats the establishment as a distinct and separate enterprise,

the references are to amounts in that balance sheet.

(4) If the company—

(a) is a foreign company, and

(b) does not draw up a UK permanent establishment balance sheet as at the relevant date,

the references are to the amounts that would be disclosed in a UK permanent establishment balance sheet as at that date, were one drawn up in accordance with generally accepted accounting practice.

(5) For the purposes of this section, a relevant group company is a "foreign company" if it is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

266 Qualifying financial services groups

(1) The worldwide group is a qualifying financial services group in a period of account if the trading income condition—

(a) is met in relation to that period, or

(b) is not met in relation to that period, but only because of losses incurred by the group in respect of activities that are normally reported on a net basis in financial statements prepared in accordance with international accounting standards.

(2) The trading income condition is met in relation to a period of account if—

(a) all or substantially all of the UK trading income of the worldwide group for that period, or

(b) all or substantially all of the worldwide trading income of the worldwide group for that period,

is derived from qualifying activities (see section 267).

(3) In this Chapter, in relation to a period of account of the worldwide group—

"UK trading income" means the sum of the trading income for that period of each company that was a relevant group company at any time during that period (see section 271), and

"worldwide trading income" means the trading income for that period of the worldwide group (see section 272).

267 Qualifying activities

In this Chapter "qualifying activities" means—

(a) lending activities and activities that are ancillary to lending activities (see section 268),

(b) insurance activities and insurance-related activities (see section 269), and

(c) relevant dealing in financial instruments (see section 270).

268 Lending activities and activities ancillary to lending activities

(1) In this Chapter "lending activities" means any of the following activities—

(a) acceptance of deposits or other repayable funds,

(b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting),

(c) finance leasing (as lessor),

(d) issuing and administering means of payment,

(e) provision of guarantees or commitments to provide money,

(f) money transmission services,

(g) provision of alternative finance arrangements, and

(h) other activities carried out in connection with activities falling within any of paragraphs (a) to (g).

(2) Activities that are ancillary to lending activities are not qualifying activities for the purposes of this Chapter if the income derived from the ancillary activities forms a significant part of the total of—

(a) that income, and

(b) the income derived from lending activities of the worldwide group in the period of account.

(3) In subsection (2) "income" means the gross income or net income that would be taken into account for the purposes of section 266 in calculating the UK or worldwide trading income of the worldwide group for the period of account.

(4) The Commissioners may by order—

(a) amend subsection (1), and

(b) make other amendments of this section in consequence of any amendment of subsection (1).

(5) In subsection (1)(h), and in the references to ancillary activities in this section and section 267(a), "activities" includes buying, holding, managing and selling assets.

(6) In this section "alternative finance arrangements" has the same meaning as in Chapter 6 of Part 6 of CTA 2009.

269 Insurance activities and insurance-related activities

(1) In this Chapter "insurance activities" means—

(a) the effecting or carrying out of contracts of insurance by a regulated insurer, and

(b) investment business that arises directly from activities falling within paragraph (a).

(2) In this Chapter "insurance-related activities" means—

(a) activities that are ancillary to insurance activities, and

(b) activities that—

(i) are of the same kind as activities carried out for the purposes of insurance activities,

(ii) are not actually carried out for those purposes, and

(iii) would not be carried out but for insurance activities being carried out.

(3) Subsection (2) is subject to subsection (4).

(4) Activities that fall within subsection (2)(a) or (b) ("the relevant activities") are not insurance-related activities if the income derived from the relevant activities forms a significant part of the total of—

(a) that income, and

(b) the income derived from insurance activities of the worldwide group in the period of account.

(5) In subsection (4) "income" means the gross income or net income that would be taken into account for the purposes of section 266 in calculating the UK or worldwide trading income of the worldwide group for the period of account.

(6) In this section—

"activities" includes buying, holding, managing and selling assets,

"contract of insurance" has the same meaning as in Chapter 1 of Part 12 of ICTA, and

"regulated insurer" means a member of the worldwide group that—

(a) is authorised under the law of any territory to carry on insurance business, or

(b) is a member of a body or organisation that is so authorised.

270 Relevant dealing in financial instruments

(1) In this Chapter "financial instrument" means anything that is a financial instrument for any purpose of the FSA Handbook.

(2) For the purposes of this Chapter, a dealing in a financial instrument is a "relevant dealing" if—

(a) it is a dealing other than in the capacity of a broker, and

(b) profits or losses on the dealing form part of the trading profits or losses of a business.

(3) In this section "broker" includes any person offering to sell securities to, or purchase securities from, members of the public generally.

271 UK trading income of the worldwide group

(1) This section applies in relation to section 266 for calculating the UK trading income of the worldwide group for a period of account.

(2) The trading income for that period of a relevant group company is the aggregate of—

(a) the gross income calculated in accordance with subsection (3), and

(b) the net income calculated in accordance with subsection (4).

(3) The income mentioned in subsection (2)(a) is the gross income—

(a) arising from the activities of the relevant group company (other than net-basis activities), and

(b) accounted for as such under generally accepted accounting practice,

without taking account of any deductions (whether for expenses or otherwise).

(4) The income mentioned in subsection (2)(b) is the net income arising from the net-basis activities of the relevant group company that—

(a) is accounted for as such under generally accepted accounting practice, or

(b) would be accounted for as such if income arising from such activities were accounted for under generally accepted accounting practice.

(5) Subsections (3) and (4) are subject to subsection (6).

(6) If a proportion of an accounting period of a relevant group company does not fall within the period of account of the worldwide group, the gross income or net income for that accounting period of the company is to be reduced, for the purposes of this section, by that proportion.

(7) Gross income or net income is to be disregarded for the purposes of subsection (2) if the income arises in respect of an amount payable by another member of the worldwide group that is either a UK group company or a relevant group company.

(8) In this section "net-basis activity" means activity that is normally reported on a net basis in financial statements prepared in accordance with generally accepted accounting practice.

272 Worldwide trading income of the worldwide group

(1) This section applies in relation to section 266 for calculating the worldwide trading income of the worldwide group for a period of account.

(2) The trading income for that period of the worldwide group is the aggregate of—

(a) the gross income calculated in accordance with subsection (3), and

(b) the net income calculated in accordance with subsection (4).

(3) The income mentioned in subsection (2)(a) is the gross income—

(a) arising from the activities of the worldwide group (other than net-basis activities), and

(b) disclosed as such in the financial statements of the worldwide group,

without taking account of any deductions (whether for expenses or otherwise).

(4) The income mentioned in subsection (2)(b) is the net income arising from the net-basis activities of the worldwide group that—

(a) is accounted for as such under international accounting standards, or

(b) would be accounted for as such if income arising from such activities were accounted for under international accounting standards.

(5) In this section "net-basis activity" means activity that is normally reported on a net basis in financial statements prepared in accordance with international accounting standards.

(6) 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.

273 Foreign currency accounting

(1) Subject to the following provisions of this section, references in this Chapter to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide group, as at any date are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent by reference to the spot rate of exchange for that date.

(2) Subsection (3) applies in relation to a period of account of the worldwide group if all the amounts disclosed in balance sheets (whether of relevant group companies, or of the worldwide group) that are relevant to a calculation under this Chapter in relation to that period are expressed in the same currency ("the relevant foreign currency") and that currency is not sterling.

(3) If this subsection applies—

(a) references in this Part to an amount disclosed in a balance sheet of a relevant group company, or of the worldwide group, are to that amount expressed in the relevant foreign currency, and

(b) for the purposes of determining under section 262 the net debt amount of a company, subsection (3) of that section is to have effect as if the reference to the amount for the time being specified there ("the section 262(3) amount") were read as a reference to the relevant amount.

(4) For this purpose "the relevant amount" means the average of—

(a) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's start date, and

(b) the section 262(3) amount expressed in the relevant foreign currency, translated by reference to the spot rate of exchange for the company's end date.

CHAPTER 3

DISALLOWANCE OF DEDUCTIONS

274 Application of Chapter and meaning of "total disallowed amount"

(1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies ("the relevant period of account")—

(a) the tested expense amount (see Chapter 8), exceeds
(b) the available amount (see Chapter 9).

(2) In this Chapter "the total disallowed amount" means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

275 Meaning of "company to which this Chapter applies"

References in this Chapter to a company to which this Chapter applies are to a company that is a relevant group company at any time during the relevant period of account.

276 Appointment of authorised company for relevant period of account

(1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.

(2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.

(3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—
(a) about the form and manner in which an appointment may be made,
(b) about how an appointment may be revoked and the form and manner of such revocation,
(c) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,
(d) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,
(e) imposing time limits in relation to making or revoking an appointment,
(f) providing that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and
(g) about cases where a company is not a relevant group company at all times during the relevant period of account.

(4) In this section "the appropriate person", in relation to a company, means—
(a) 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 company to act on its behalf for the purposes of this Part.

(5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of "proper officer") apply for the purposes of this section as they apply for the purposes of that section.

277 Meaning of "the reporting body"

In this Chapter "the reporting body" means—
(a) if an appointment under section 276 has effect in relation to the relevant period of account, the company appointed under that section, and

(b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.

278 Statement of allocated disallowances: submission

(1) The reporting body must submit a statement (a "statement of allocated disallowances") in relation to the relevant period of account to HMRC.

(2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.

(3) A statement submitted under this section must comply with the requirements of section 280.

279 Statement of allocated disallowances: submission of revised statement

(1) If the reporting body has submitted a statement of allocated disallowances under section 278 or this section, it may submit a revised statement to HMRC.

(2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.

(3) A statement submitted under this section must comply with the requirements of section 280.

(4) A statement submitted under this section—

(a) must indicate the respects in which it differs from the previous statement, and

(b) supersedes the previous statement.

280 Statement of allocated disallowances: requirements

(1) This section applies in relation to a statement of allocated disallowances submitted under section 278 or 279.

(2) The statement must be signed—

(a) if an appointment under section 276 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or

(b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.

(3) The statement must show—

(a) the tested expense amount,

(b) the available amount, and

(c) the total disallowed amount.

(4) The statement must—

(a) list one or more companies to which this Chapter applies, and

(b) in relation to each listed company, specify one or more financing expense amounts for the relevant period of account that are to be disallowed, and give the relevant details in relation to each such amount.

(5) For this purpose "the relevant details", in relation to a financing expense amount are—

(a) which of conditions A, B and C in section 313 is met in relation to the amount, and

(b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.

(6) The sum of the amounts specified under subsection (4)(b) must equal the total disallowed amount.

(7) In this section "the appropriate person", in relation to a company, means—

(a) 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 company to act on its behalf for the purposes of this Part.

(8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of "proper officer") apply for the purposes of this section as they apply for the purposes of that section.

(9) For the meaning of "financing expense amount", see Chapter 7.

281 Statement of allocated disallowances: effect

A financing expense amount of a company to which this Chapter applies that is specified in a statement of allocated disallowances under section 280(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

282 Company tax returns

(1) This section applies if—

(a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and

(b) as a result of the submission of a revised statement of allocated disallowances under section 279—

(i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or

(ii) any other information contained in the return is incorrect.

(2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

283 Power to make regulations about statement of allocated disallowances

The Commissioners may by regulations make further provision about a statement of allocated disallowances including, in particular, provision—

(a) about the form of a statement and the manner in which it is to be submitted,

(b) requiring a person to give information to HMRC in connection with a statement,

(c) as to circumstances in which a statement that is not received by the time specified in section 278(2) or 279(2) is to be treated as if it were so received, and

(d) as to circumstances in which a statement that does not comply with the requirements of section 280 is to be treated as if it did so comply.

284 Failure of reporting body to submit statement of allocated disallowances

(1) This section applies if no statement of allocated disallowances is submitted under section 278 that complies with the requirements of section 280.

(2) Each company to which this Chapter applies that has a net financing deduction for the relevant period of account that is greater than nil must reduce the amounts that it brings into account in relevant accounting periods in respect of financing expense amounts.

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

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

where—

NFD is the net financing deduction of the company for the relevant period of account (see section 329(2)),

TEA is the tested expense amount for the relevant period of account (see section 329(1)), and

TDA is the total disallowed amount (see section 274(2)).

(4) The particular financing expense amounts that must be reduced, and the amounts by which they must be reduced, must be determined in accordance with regulations made by the Commissioners.

(5) Regulations under this section may, in particular, include any of the following—

(a) provision conferring a discretion on a company required to make reductions under this section as to the particular financing expense amounts that are to be reduced,

(b) provision requiring a company required to make reductions under this section to notify another relevant group company of the particular reductions made, and

(c) provision as to the times by which such notices must be sent and as to information that must accompany such notices.

285 Powers to make regulations in relation to reductions under section 284

(1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 284 to reduce the amounts that it brings into account in respect of financing expense amounts for the relevant period of account ("a company required to make default reductions") has sufficient information to determine their amount.

(2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.

(3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.

(4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 284 of a financing expense amount.

(5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 284.

(6) In this section "specified" means specified in regulations under this section.

CHAPTER 4

EXEMPTION OF FINANCING INCOME

286 Application of Chapter and meaning of "total disallowed amount"

(1) This Chapter applies if, for a period of account of the worldwide group to which this Part applies ("the relevant period of account")—

(a) the tested expense amount (see Chapter 8), exceeds

(b) the available amount (see Chapter 9).

(2) In this Chapter the "total disallowed amount" means the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (1).

287 Meaning of "company to which this Chapter applies"

References in this Chapter to a company to which this Chapter applies are to a company that is a UK group company at any time during the relevant period of account.

288 Appointment of authorised company for relevant period of account

(1) The companies to which this Chapter applies may appoint one of their number to exercise functions conferred under this Chapter on the reporting body in relation to the relevant period of account.

(2) An appointment under this section is of no effect unless it is signed on behalf of each company to which this Chapter applies by the appropriate person.

(3) The Commissioners may by regulations make further provision about an appointment under this section including, in particular, provision—

(a) about the form and manner in which an appointment may be made or revoked,

(b) requiring a person to notify HMRC of the making or revocation of an appointment and about the form and manner of such notification,

(c) requiring a person to give information to HMRC in connection with the making or revocation of an appointment,

(d) imposing time limits in relation to making or revoking an appointment,

(e) that an appointment or its revocation is of no effect, or ceases to have effect, if time limits or other requirements under the regulations are not met, and

(f) about cases where a company does not meet condition A in section 345, or is not a member of the worldwide group, at all times during the relevant period of account.

(4) In this section "the appropriate person", in relation to a company, means—

(a) 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 company to act on its behalf for the purposes of this Part.

(5) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of "proper officer") apply for the purposes of this section as they apply for the purposes of that section.

289 Meaning of "the reporting body"

In this Chapter "the reporting body" means—

(a) if an appointment under section 288 has effect in relation to the relevant period of account, the company appointed under that section, and

(b) if such an appointment does not have effect in relation to the relevant period of account, the companies to which this Chapter applies, acting jointly.

290 Statement of allocated exemptions: submission

(1) The reporting body must submit a statement (a "statement of allocated exemptions") in relation to the relevant period of account to HMRC.

(2) A statement submitted under this section must be received by HMRC within 12 months of the end of the relevant period of account.

(3) A statement submitted under this section must comply with the requirements of section 292.

291 Statement of allocated exemptions: submission of revised statement

(1) If the reporting body has submitted a statement of allocated exemptions under section 290 or this section, it may submit a revised statement to HMRC.

(2) A statement submitted under this section must be received by HMRC within 36 months of the end of the relevant period of account.

(3) A statement submitted under this section must comply with the requirements of section 292.

(4) A statement submitted under this section—

(a) must indicate the respects in which it differs from the previous statement, and

(b) supersedes the previous statement.

292 Statement of allocated exemptions: requirements

(1) This section applies in relation to a statement of allocated exemptions submitted under section 290 or 291.

(2) The statement must be signed—

(a) if an appointment under section 288 has effect in relation to the relevant period of account, by the appropriate person in relation to the company appointed under that section, or

(b) if such an appointment does not have effect in relation to the relevant period of account, by the appropriate person in relation to each company to which this Chapter applies.

(3) The statement must show—

(a) the tested expense amount,

(b) the available amount, and

(c) the total disallowed amount.

(4) The statement must—

(a) list one or more companies to which this Chapter applies, and

(b) in relation to each listed company, specify one or more financing income amounts for the relevant period of account that are to be exempted, and give the relevant details in relation to each such amount.

(5) For this purpose "the relevant details" in relation to a financing income amount are—

(a) which of conditions A, B and C in section 314 is met in relation to the amount, and

(b) the relevant accounting period of the company in which the amount would, apart from this Part, be brought into account for the purposes of corporation tax.

(6) The sum of the amounts specified under subsection (4)(b) must not exceed the lower of—

(a) the total disallowed amount, and

(b) the tested income amount (see Chapter 8).

(7) In this section "the appropriate person", in relation to a company, means—

(a) 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 company to act on its behalf for the purposes of this Part.

(8) Subsections (3) and (4) of section 108 of TMA 1970 (responsibility of company officers: meaning of "proper officer") apply for the purposes of this section as they apply for the purposes of that section.

(9) For the meaning of "financing income amount", see Chapter 7.

293 Statement of allocated exemptions: effect

A financing income amount of a company to which this Chapter applies that is specified in a statement of allocated exemptions under section 292(4)(b) is not to be brought into account by the company for the purposes of corporation tax.

294 Company tax returns

(1) This section applies if—

(a) a company to which this Chapter applies has delivered a company tax return for a relevant accounting period, and

(b) as a result of the submission of a revised statement of allocated exemptions under section 291—

(i) there is a change in the amount of profits on which corporation tax is chargeable for the period, or

(ii) any other information contained in the return is incorrect.

(2) The company is treated as having amended its company tax return for the accounting period so as to reflect the change mentioned in subsection (1)(b)(i) or to correct the information mentioned in subsection (1)(b)(ii).

295 Power to make regulations about statement of allocated exemptions

The Commissioners may by regulations make further provision about a statement of allocated exemptions including, in particular, provision—

(a) about the form of a statement and the manner in which it is to be submitted,

(b) requiring a person to give information to HMRC in connection with a statement,

(c) as to circumstances in which a statement that is not received by the time specified in section 290(2) or 291(2) is to be treated as if it were so received, and

(d) as to circumstances in which a statement that does not comply with the requirements of section 292 is to be treated as if it did so comply.

296 Failure of reporting body to submit statement of allocated exemptions

(1) This section applies if no statement of allocated exemptions is submitted under section 290 that complies with the requirements of section 292.

(2) Subject to the following provisions of this section, each financing income amount for the relevant period of account of each company to which this Chapter applies is to be reduced to nil.

(3) In this section "unrestricted reduction" means a reduction of a financing income amount for the relevant period of account of a company to which this Chapter applies, determined in accordance with subsection (2).

(4) Subsection (5) applies if—

(a) the total of the unrestricted reductions, exceeds

(b) the lower of—

(i) the total disallowed amount, and

(ii) the tested income amount.

(5) Each unrestricted reduction is to be reduced by—

$$\frac{UR}{TUR} \times X$$

where—

UR is the unrestricted reduction in question,

TUR is the total of the unrestricted reductions, and

X is the excess mentioned in subsection (4).

297 Power to make regulations in relation to reductions under section 296

(1) The Commissioners may by regulations make provision for the purpose of securing that a company required under section 296 to reduce the amounts that it brings into account in respect of financing income amounts for the relevant period of account ("a company required to make default reductions") has sufficient information to determine their amount.

(2) Provision that may be made in regulations under subsection (1) includes provision requiring one or more members of the worldwide group to send specified information to a company required to make default reductions.

(3) The Commissioners may by regulations make provision about cases in which (whether as a result of non-compliance with regulations made under subsection (1) or otherwise) a company required to make default reductions does not possess specified information.

(4) Provision that may be made in regulations under subsection (3) includes provision as to assumptions that may or must be made in determining the amount of a reduction under section 296 of a financing income amount.

(5) The Commissioners may by regulations make provision for determining a time later than that determined under paragraph 15(4) of Schedule 18 to FA 1998 (amendment of return by company) before which a company required to make default reductions may amend its company tax return so as to reflect a reduction under section 296.

(6) In this section "specified" means specified in regulations under this section.

298 Balancing payments between group companies: no tax charge or relief

(1) This section applies if—

(a) one or more financing income amounts of a company ("company A") for the relevant period of account are—

(i) because of section 293, not brought into account, or

(ii) because of section 296, reduced,

(b) one or more financing expense amounts of another company ("company B") for the relevant period of account are—

(i) because of section 281, not brought into account, or

(ii) because of section 284, reduced,

(c) company A makes one or more payments ("the balancing payments") to company B, and

(d) the sole or main reason for making the balancing payments is that the conditions in paragraphs (a) and (b) are met.

(2) To the extent that the sum of the balancing payments does not exceed the amount specified in subsection (3), those payments—

(a) are not to be taken into account in computing profits or losses of either company A or company B for the purposes of corporation tax, and

(b) are not to be regarded as distributions for any of the purposes of the Corporation Tax Acts.

(3) The amount mentioned in subsection (2) is the lower of—

(a) the sum of the financing income amounts mentioned in subsection (1)(a), and
(b) the sum of the financing expense amounts mentioned in subsection (1)(b).

CHAPTER 5

INTRA-GROUP FINANCING INCOME WHERE PAYER DENIED DEDUCTION

299 Tax exemption for certain financing income received from EEA companies

(1) A financing income amount of a company that is a member of the worldwide group ("the recipient") is not to be brought into account for the purposes of corporation tax if—
(a) it arises as a result of a payment by another company that is a member of the worldwide group ("the payer"),
(b) the payment is received during a period of account of the worldwide group to which this Part applies, and
(c) conditions A, B and C are met.

(2) Condition A is that, at the time the payment is received, the payer is a relevant associate of the recipient (see section 300).

(3) Condition B is that, at the time the payment is received—
(a) the payer is tax-resident in an EEA territory (see section 301), and
(b) the payer is liable to a tax of that territory that is chargeable by reference to profits, income or gains arising to the payer.

(4) Condition C is that—
(a) qualifying EEA tax relief for the payment is not available to the payer in the period in which the payment is made ("the current period") or any previous period (see section 302), and
(b) qualifying EEA tax relief for the payment is not available to the payer in any period after the current period (see section 303).

(5) For the meaning of "financing income amount", see section 305.

300 Meaning of "relevant associate"

For the purposes of this Chapter, the payer is a "relevant associate" of the recipient if—
(a) the payer is a parent of the recipient,
(b) the payer is a 75% subsidiary of the recipient, or
(c) the payer is a 75% subsidiary of a parent of the recipient.

301 Meaning of "tax-resident" and "EEA territory"

(1) For the purposes of this Chapter, the payer is "tax-resident" in a territory if it is liable, under the law of that territory, to tax by reason of domicile, residence or place of management.

(2) In this Chapter "EEA territory" means a territory outside the United Kingdom that is within the European Economic Area.

302 Qualifying EEA tax relief for payment in current or previous period

(1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in the current period or a previous period if conditions A and B are met in relation to the payment.

(2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—

(a) arise to the payer in the current period or any previous period, and

(b) are chargeable to any tax of the United Kingdom or an EEA territory for the current period or any previous period.

(3) Condition B is that no relief determined by reference to the payment can be given in the current period or any previous period for the purposes of any tax of the United Kingdom or an EEA territory by—

(a) the payment of a credit,

(b) the elimination or reduction of a tax liability, or

(c) any other means of any kind.

(4) Conditions A and B are not met in relation to the payment unless every step is taken (whether by the payer or any other person) to secure that deductions are taken into account as mentioned in subsection (2) and reliefs are given as mentioned in subsection (3).

(5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—

(a) this Part, or

(b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).

(6) For this purpose—

(a) arrangements are "double taxation arrangements" if they are arrangements made between any two territories with a view to affording relief from double taxation, and

(b) "associated enterprise rules" means—

(i) rules that, on the passing of FA 2009, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or

(ii) any rules in the same or equivalent terms.

303 Qualifying EEA tax relief for payment in future period

(1) For the purposes of this Chapter, qualifying EEA tax relief for a payment is not available to the payer in a period after the current period if conditions A and B are met in relation to the payment.

(2) Condition A is that no deduction calculated by reference to the payment can be taken into account in calculating any profits, income or gains that—

(a) might arise to the payer in any period after the current period, and

(b) would, if they did so arise, be chargeable to any tax of the United Kingdom or an EEA territory for any period after the current period.

(3) Condition B is that no relief determined by reference to the payment can be given in any period after the current period for the purposes of any tax of the United Kingdom or an EEA territory by—

(a) the payment of a credit,

(b) the elimination or reduction of a tax liability, or

(c) any other means of any kind.

(4) The question whether a deduction can be taken into account as mentioned in subsection (2) or a relief can be given as mentioned in subsection (3) is to be determined by reference to the position immediately after the end of the current period.

(5) Conditions A and B are not met in relation to the payment unless they would be met disregarding a failure to obtain a deduction or relief as a result of—

(a) this Part, or

(b) provision made as a result of double taxation arrangements between any two territories (including provision sanctioned by associated enterprise rules contained in such arrangements).

(6) For this purpose—

(a) arrangements are "double taxation arrangements" if they are arrangements made between any two territories with a view to affording relief from double taxation, and

(b) "associated enterprise rules" means—

(i) rules that, on the passing of FA 2009, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development, or

(ii) any rules in the same or equivalent terms.

304 References to tax of a territory

(1) References in this Chapter to a tax of the United Kingdom are to income tax or corporation tax.

(2) References in this Chapter to a tax of a territory outside the United Kingdom are to a tax chargeable under the law of that territory that—

(a) is charged on income and corresponds to income tax, or

(b) is charged on income or chargeable gains or both and corresponds to corporation tax.

(3) For the purposes of this section, a tax chargeable under the law of a territory outside the United Kingdom does not fail to correspond to income tax or corporation tax just because—

(a) it is chargeable under the law of a province, state or other part of a country, or

(b) it is levied by or on behalf of a municipality or other local body.

305 Financing income amounts of a company

(1) References in this Chapter to a "financing income amount" of a company are (subject to subsection (6)) to any amount that meets condition A, B or C.

(2) Condition A is that the amount is a credit that—

(a) would, apart from this Chapter, be brought into account by the company for the purposes of corporation tax,

(b) would be so brought into account in respect of a loan relationship—

(i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or

(ii) under Part 5 of that Act (other loan relationships), and

(c) is not an excluded credit.

(3) A credit is "excluded" if it is in respect of—

(a) the reversal of an impairment loss,

(b) an exchange gain, or

(c) a profit from a related transaction.

(4) Condition B 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 the financing income implicit in amounts received under finance leases.

(5) Condition C 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 the financing income receivable on debt factoring, or any similar transaction.

(6) The provisions of Chapter 7 apply in relation to an amount that is a financing income amount of a company because of meeting condition A, B or C in this section as they apply in relation to an amount that is a financing income amount of a relevant group company because of meeting condition A, B or C in section 314.

CHAPTER 6

TAX AVOIDANCE

306 Schemes involving manipulation of rules in Chapter 2

(1) A period of account of the worldwide group that, apart from this section, is not within section 261(1) is treated as within that provision if conditions A, B and C are met.

(2) Condition A is that—

(a) at any time before the end of the period, a scheme is entered into, and

(b) if the scheme had not been entered into, the period would have been within section 261(1).

(3) Condition B is that the main purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the period is not within section 261(1).

(4) Condition C is that the scheme is not an excluded scheme.

307 Schemes involving manipulation of rules in Chapters 3 and 4

(1) If conditions A, B and C are met in relation to a period of account of the worldwide group ("the relevant period of account"), the tested expense amount, the tested income amount and the available amount for the period are to be calculated in accordance with section 309.

(2) Condition A is that—

(a) at any time before the end of the relevant period of account, a scheme is entered into, and

(b) the main purpose, or one of the main purposes, of any party to the scheme on entering into it is to secure that the amount of the relevant net deduction (within the meaning given by section 308) is lower than it would be if that amount were calculated in accordance with section 309.

(3) Condition B is that a result of the scheme is that—

(a) the sum of the profits of UK group companies that—

(i) arise in relevant accounting periods, and

(ii) are chargeable to corporation tax,

is less than it would be if that sum were determined in accordance with section 309, or

(b) the sum of the losses of UK group companies that—

(i) arise in relevant accounting periods (other than any taken into account in calculating profits within paragraph (a)), and

(ii) are capable of being a carried-back amount or a carried-forward amount (see section 310),

is higher than it would be if that sum were determined in accordance with section 309.

(4) Condition C is that the scheme is not an excluded scheme.

(5) If—

(a) a profit or loss arises in an accounting period of a UK group company, and

(b) a proportion of that period does not fall within the relevant period of account,

the profit or loss is to be reduced, for the purposes of condition B, by the same proportion.

308 Meaning of "relevant net deduction"

(1) In section 307(2) the "relevant net deduction" means—

(a) the amount by which the total disallowed amount exceeds the tested income amount, or

(b) if the total disallowed amount does not exceed the tested income amount, nil.

(2) In this section the "total disallowed amount" means—

(a) the amount by which the tested expense amount exceeds the available amount, or

(b) if the tested expense amount does not exceed the available amount, nil.

309 Calculation of amounts

(1) References in section 307 to the calculation of any amount or sum in accordance with this section are to the calculation of that amount or sum on the following assumptions.

(2) The assumptions are that—

(a) the scheme in question was not entered into, and

(b) instead, anything that it is more likely than not would have been done or not done had this Part not had effect in relation to the relevant period of account, was done or not done.

310 Meaning of "carried-back amount" and "carried-forward amount"

(1) In section 307 "carried-back amount" means—

(a) an amount carried back under section 389(2) of CTA 2009 (deficits of insurance companies),

(b) an amount carried back as a result of a claim under section 459(1)(b) of CTA 2009 (non-trading deficits from loan relationships), or

(c) an amount carried back under section 37(3)(b) of CTA 2010 (relief for trade losses against total profits).

(2) In section 307 "carried-forward amount" means—

(a) an amount carried forward under section 76(12) or (13) of ICTA (certain expenses of insurance companies),

(b) an amount carried forward under section 436A(4) of ICTA (insurance companies: losses from gross roll-up business),

(c) an amount carried forward under section 8(1)(b) of TCGA 1992 (allowable losses),

(d) an amount carried forward under section 391(2) of CTA 2009 (deficits of insurance companies),

(e) an amount carried forward under section 457(3) of CTA 2009 (non-trading deficits from loan relationships),

(f) an amount carried forward under section 753(3) of CTA 2009 (non-trading loss on intangible fixed assets),

(g) an amount carried forward under section 925(3) of CTA 2009 (patent income: relief for expenses),

(h) an amount carried forward under section 1223 of CTA 2009 (expenses of management and other amounts),

(i) an amount carried forward under section 45(4) of CTA 2010 (carry forward of trade loss against subsequent trade profit),

(j) an amount carried forward under section 62(5) of CTA 2010 (relief for losses made UK property business),

(k) an amount carried forward under section 63(3) of CTA 2010 (company with investment business ceasing to carry on UK property business),

(l) an amount carried forward under section 66(3) of CTA 2010 (relief for losses made in overseas property business), or

(m) an amount carried forward under section 91(6) of CTA 2010 (relief for losses from miscellaneous transactions).

311 Schemes involving manipulation of rules in Chapter 5

(1) This section applies to a financing income amount of a company received during a period of account of the worldwide group if—

(a) apart from this section, the financing income amount would, because of section 299, not be brought into account for the purposes of corporation tax, and

(b) conditions A, B and C are met.

(2) Condition A is that, at any time before the financing income amount is received, a scheme is entered into that secures that any of the conditions in subsections (2) to (4) of section 299 ("the relevant section 299 condition") is met in relation to the amount.

(3) Condition B is that the purpose, or one of the main purposes, of any party to the scheme on entering into the scheme is to secure that the relevant section 299 condition is met.

(4) Condition C is that the scheme is not an excluded scheme.

(5) If this section applies to a financing income amount, the relevant section 299 condition is treated as not met in relation to the amount.

(6) Section 305 (meaning of references to a "financing income amount" of a company) applies for the purposes of this section.

312 Meaning of "scheme" and "excluded scheme"

(1) For the purposes of this Chapter, "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.

(2) For the purposes of this Chapter, a scheme is "excluded" if it is of a description specified in regulations made by the Commissioners.

(3) Regulations under subsection (2) may make different provision for different purposes.

CHAPTER 7

"FINANCING EXPENSE AMOUNT" AND "FINANCING INCOME AMOUNT"

313 The financing expense amounts of a company

(1) References in this Part to a "financing expense amount" of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.

(2) Condition A is that the amount is a debit that—

(a) would, apart from this Part, be brought into account in a relevant accounting period of the company,

(b) would be so brought into account in respect of a loan relationship—

(i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or

(ii) under Part 5 of that Act (other loan relationships), and

(c) is not an excluded debit.

(3) A debit is "excluded" if it is in respect of—

(a) an impairment loss,

(b) an exchange loss, or

(c) a related transaction.

(4) Condition B 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 the financing cost implicit in payments made under finance leases.

(5) Condition C 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 the financing cost payable on debt factoring, or any similar transaction.

(6) If—

(a) a debit or other amount would, apart from this Part, be brought into account in an accounting period, and

(b) a proportion of that period does not fall within the period of account of the worldwide group,

the debit or other amount is to be reduced, for the purposes of this section, by the same proportion.

(7) This section is subject to sections 316 to 327.

314 The financing income amounts of a company

(1) References in this Part (except in Chapter 5 and section 311) to a "financing income amount" of a company for a period of account of the worldwide group are to any amount that meets condition A, B or C.

(2) Condition A is that the amount is a credit that—

(a) would, apart from this Part, be brought into account in a relevant accounting period of the company,

(b) would be so brought into account in respect of a loan relationship—

(i) under Part 3 of CTA 2009 as a result of section 297 of that Act (loan relationships for purposes of trade), or

(ii) under Part 5 of that Act (other loan relationships), and

(c) is not an excluded credit.

(3) A credit is "excluded" if it is in respect of—

(a) the reversal of an impairment loss,

(b) an exchange gain, or

(c) a profit from a related transaction.

(4) Condition B 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 the financing income implicit in amounts received under finance leases.

(5) Condition C 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 the financing income receivable on debt factoring, or any similar transaction.

(6) If—

(a) a credit or other amount would, apart from this Part, be brought into account in an accounting period, and

(b) a proportion of that period does not fall within the period of account of the worldwide group,

the credit or other amount is to be reduced, for the purposes of this section, by the same proportion.

(7) This section is subject to sections 316 to 327.

315 Interpretation of sections 313 and 314

In sections 313 and 314 the following expressions have the same meaning as they have in Part 5 of CTA 2009 (loan relationships)—

"exchange gain" and "exchange loss",

"impairment",

"impairment loss", and

"related transaction".

316 Group treasury companies

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

(a) a financing expense amount of a group treasury company because of meeting condition A, B or C in section 313, or

(b) a financing income amount of a group treasury company because of meeting condition A, B or C in section 314.

(2) The relevant amount, and all other amounts that are relevant amounts in respect of the group treasury company and the relevant period, are treated as not being a financing expense amount or a financing income amount of the group treasury company, but only if that company makes an election for the purposes of this section in respect of the relevant period.

(3) An election under this section must be made within 3 years after the end of the relevant period.

(4) If two or more members of the worldwide group are group treasury companies in the relevant period, an election under this section made by any of them is not valid unless each of them makes such an election in respect of the relevant period before the end of the 3 year period mentioned in subsection (3).

(5) A company is a group treasury company in the relevant period if conditions 1, 2 and 3 are met.

(6) Condition 1 is that the company is a member of the worldwide group.

(7) Condition 2 is that the company undertakes treasury activities for the worldwide group in the relevant period (whether or not it also undertakes other activities).

(8) Condition 3 is that—

(a) if the company is the only company to meet conditions 1 and 2 in the relevant period, or the only other companies to meet those conditions are not UK group companies, at least 90% of the relevant income of the company for the relevant period is group treasury revenue, or

(b) if the company and one or more other companies each of which is a UK group company meet conditions 1 and 2 in the relevant period, at least 90% of the aggregate relevant income of those companies for the relevant period is group treasury revenue.

(9) For the purposes of this section, a company undertakes treasury activities for the worldwide group in the relevant period if, in that period, it does one or more of the following things in relation to, or on behalf of, the worldwide group or any of its members—

(a) managing surplus deposits of money or overdrafts,

(b) making or receiving deposits of money,

(c) lending money,

(d) subscribing for or holding shares in another company which is a UK group company and a group treasury company,

(e) investing in debt securities, and

(f) hedging assets, liabilities, income or expenses.

(10) For the purposes of this section "group treasury revenue", in relation to a company, means revenue—

(a) arising from the treasury activities that the company undertakes for the worldwide group, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise).

(11) But revenue consisting of a dividend or other distribution is not group treasury revenue unless it is a dividend or distribution from a company that is, in the relevant period—

(a) a UK group company, and

(b) a group treasury company.

(12) In this section—

"debt security" has the same meaning as in the FSA Handbook,

"relevant income", in relation to a company, means income—

(a) arising from the activities of the company, and

(b) accounted for as such under generally accepted accounting practice,

before any deduction (whether for expenses or otherwise), and

"relevant period" means the period of account of the worldwide group to which the relevant amount relates.

317 Real estate investment trusts

(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 the finance arrangement is one to which section 211 of CTA 2009 does not apply because of section 599(3)(a) of CTA 2010.

318 Companies engaged in oil extraction activities

(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 or condition B in section 313, or

(b) a financing income amount of a company because of meeting condition A or condition B 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 conditions 1 and 2 are met.

(3) Condition 1 is that the company is treated, in the accounting period in which the amount is brought into account, as carrying on a ring fence trade (see section 277 of CTA 2010).

(4) Condition 2 is that the amount falls to be brought into account in calculating the profits of that trade for that accounting period.

319 Intra-group short-term finance: financing expense

(1) This section applies if, apart from this section, an amount ("the relevant amount") is a financing expense amount of a company ("company A") because of meeting condition A in section 313.

(2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.

(3) Such an election may not be made unless conditions 1 and 2 are met.

(4) Condition 1 is that company A and the other party to the loan relationship ("company B") are both members of the worldwide group.

(5) Condition 2 is that the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group.

(6) An election under this section may only be made—

(a) jointly by company A and company B, and

(b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

(7) An election under this section is irrevocable.

(8) In this section "short-term loan relationship" has the meaning given in section 321.

320 Intra-group short-term finance: financing income

(1) This section applies if—

(a) under section 319, the relevant amount is treated as not being a financing expense amount of company A, and

(b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.

(2) The relevant amount is treated as not being a financing income amount of company B.

(3) In this section "company A" and "company B" have the same meaning as in section 319.

321 Short-term loan relationships

(1) For the purposes of section 319, the finance arrangement is a short-term loan relationship as respects the period of account of the worldwide group ("the relevant period") if—

(a) regulations made by the Commissioners provide for it to be so, or

(b) condition A or B is met.

(2) Condition A is that the finance arrangement does not terminate during the relevant period and—

(a) to the extent that the finance arrangement provides for the creation of money debt, its terms require all money debt created under it to be settled within 12 months of money debt first being created under it, and

(b) to the extent that the finance arrangement is otherwise a loan relationship, its terms provide for it to terminate within 12 months of its coming into force.

(3) Condition B is that the finance arrangement terminates during, or after the end of, the relevant period and—

(a) to the extent that the relationship provided for the creation of money debt, all money debt created under it was settled within 12 months of money debt first being created under it, and

(b) to the extent that the relationship was otherwise a loan relationship, it terminated within 12 months of its coming into force.

(4) The Treasury may, by regulations, make provision about other circumstances in which the finance arrangement is to be taken not to be a short-term loan relationship as respects—

(a) the relevant period, or

(b) any part or parts of the relevant period.

(5) Regulations under subsection (4) may include provision for the finance arrangement to be taken never to have been a short-term loan relationship as respects the relevant period or the part or parts of it.

(6) Regulations under subsection (4) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

(7) The Commissioners may by regulations make provision (including provision conferring a discretion on the Commissioners) about circumstances in which regulations under subsection (4) are not to apply in relation to the finance arrangements.

322 Stranded deficits in non-trading loan relationships: financing expense

(1) This section applies if, apart from this section, an amount ("the relevant amount") is a financing expense amount of a company ("company A") because of meeting condition A in section 313.

(2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.

(3) Such an election may not be made unless each of conditions 1 to 4 is met.

(4) Condition 1 is that company A and the other party to the loan relationship ("company B") are both members of the worldwide group.

(5) Condition 2 is that company B—

(a) is resident in the United Kingdom, or

(b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(6) Condition 3 is that, under section 457 of CTA 2009, company B carries forward an amount of non-trading deficit and sets it off against non-trading profits of an accounting period that falls wholly or partly within the period of account of the worldwide group.

(7) Condition 4 is that the amount of non-trading deficit carried forward and set off is equal to, or greater than, the relevant amount.

(8) An election under this section may only be made—

(a) jointly by company A and company B, and

(b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

323 Stranded deficits in non-trading loan relationships: financing income

(1) This section applies if—

(a) under section 322, the relevant amount is treated as not being a financing expense amount of company A, and

(b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.

(2) The relevant amount is treated as not being a financing income amount of company B.

(3) In this section "company A" and "company B" have the same meaning as in section 322.

324 Stranded management expenses in non-trading loan relationships: financing expense

(1) This section applies if, apart from this section, an amount ("the relevant amount") is a financing expense amount of a company ("company A") because of meeting condition A in section 313.

(2) The relevant amount is treated as not being a financing expense amount of company A, but only if an election is made for this purpose.

(3) Such an election may not be made unless each of conditions 1 to 5 is met.

(4) Condition 1 is that company A and the other party to the finance arrangement ("company B") are both members of the worldwide group.

(5) Condition 2 is that company B is a company with investment business (within the meaning of Part 16 of CTA 2009) and—

(a) is resident in the United Kingdom, or

(b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(6) Condition 3 is that company B is allowed a deduction under section 1219 of CTA 2009 (expenses of management of a company's investment business) in respect of an accounting period that falls wholly or partly within the period of account of the worldwide group ("the relevant period").

(7) Condition 4 is that the amount of the deduction allowed is equal to, or greater than, the relevant amount.

(8) Condition 5 is that the calculation of company B's total profits for the relevant period for the purposes of corporation tax results in a loss if company B's credit is not included in that calculation.

(9) An election under this section may only be made—

(a) jointly by company A and company B, and

(b) within 36 months of the end of the period of account of the worldwide group to which the relevant amount relates.

(10) In this section "company B's credit" means the credit to company B that arises from the debit to company A as a result of which condition A in section 313 is met.

325 Stranded management expenses in non-trading loan relationships: financing income

(1) This section applies if—

(a) under section 324, the relevant amount is treated as not being a financing expense amount of company A, and

(b) apart from this section, the relevant amount is a financing income amount of company B because of meeting condition A in section 314.

(2) The relevant amount is treated as not being a financing income amount of company B.

(3) In this section "company A" and "company B" have the same meaning as in section 324.

326 Charities

(1) This section applies if, apart from this section, an amount ("the relevant amount") is a financing expense amount of a company because of meeting condition A, B or C in section 313.

(2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is a charity.

(3) In this section—

"charity" means any body of persons or trust established for charitable purposes only, and

"creditor" means—

(a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and

(b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises.

327 Educational and public bodies

(1) This section applies if, apart from this section, an amount ("the relevant amount") is a financing expense amount of a company because of meeting condition A, B or C in section 313.

(2) The relevant amount is treated as not being a financing expense amount of the company if the creditor is—

(a) a designated educational establishment,

(b) a health service body,

(c) a local authority, or

(d) a person that is prescribed, or is of a description of persons prescribed, in an order made by the Commissioners for the purposes of this section.

(3) The Commissioners may not prescribe a person, or a description of persons, for the purposes of this section unless they are satisfied that the person, or each of the persons within the description, has functions some or all of which are of a public nature.

(4) In this section—

"creditor" means—

(a) if the relevant amount is a debit that meets condition A in section 313, the loan creditor who receives the payment in relation to which the relevant amount arises, and

(b) if the relevant amount meets condition B or C in section 313, the recipient of the payment in relation to which the relevant amount arises,

"designated educational establishment" has the same meaning as in section 105 of CTA 2009, and

"health service body" has the same meaning as in section 985 of CTA 2010.

328 Interpretation of sections 316 to 327

In sections 316 to 327 "finance arrangement" means—

(a) in the case of an amount that is a debit or credit that meets the condition in section 313(2) or 314(2), the loan relationship to which the debit or credit relates,

(b) in the case of an amount that meets the condition in section 313(4) or 314(4), the finance lease to which the amount relates, and

(c) in the case of an amount that meets the condition in section 313(5) or 314(5), the debt factoring or similar transaction to which the amount relates.

CHAPTER 8

"TESTED EXPENSE AMOUNT" AND "TESTED INCOME AMOUNT"

329 The tested expense amount

(1) References in this Part to the "tested expense amount" for a period of account of the worldwide group are to the sum of the net financing deductions of each relevant group company.

(2) References in this Part to the "net financing deduction" of a company for a period of account of the worldwide group are to—

(a) the sum of the company's financing expense amounts for the period (see section 313), less

(b) the sum of the company's financing income amounts for the period (see section 314).

(3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a relevant group company.

(4) If the amount determined in accordance with subsection (2) is negative, the net financing deduction of the company for the period is nil.

(5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing deduction of the company for the period is nil.

330 The tested income amount

(1) References in this Part to the "tested income amount" for a period of account of the worldwide group are to the sum of the net financing incomes of each UK group company.

(2) The reference in subsection (1) to the "net financing income" of a company for a period of account of the worldwide group is to—

(a) the sum of the company's financing income amounts for the period (see section 314), less

(b) the sum of the company's financing expense amounts for the period (see section 313).

(3) References in subsection (2) to a company's financing expense amounts or financing income amounts for a period of account of the worldwide group do not include any amount that arises as a result of a transaction that takes place at a time at which the company is not a UK group company.

(4) If the amount determined in accordance with subsection (2) is negative, the net financing income of the company for the period is nil.

(5) If the amount determined in accordance with subsection (2) is small (see section 331), the net financing income of the company for the period is nil.

331 Companies with net financing deduction or net financing income that is small

(1) An amount determined in accordance with section 329(2) or 330(2) is "small" if it is less than £500,000.

(2) The Treasury may by order amend subsection (1) by substituting a higher or lower amount for the amount for the time being specified there.

(3) An order under subsection (2) may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

(4) An order under subsection (2) may only have effect in relation to periods of account of the worldwide group beginning after the date on which the order is made.

CHAPTER 9

"AVAILABLE AMOUNT"

332 The available amount

(1) References in this Part to the "available amount" for a period of account of the worldwide group are to the sum of the amounts disclosed in the financial statements of the group for that period in respect of—

(a) interest payable on amounts borrowed,

(b) amortisation of discounts relating to amounts borrowed,

(c) amortisation of premiums relating to amounts borrowed,

(d) amortisation of ancillary costs relating to amounts borrowed,

(e) the financing cost implicit in payments made under finance leases,

(f) the financing cost relating to debt factoring, or

(g) matters of such other description as may be specified in regulations made by the Commissioners.

(2) An amount that falls within any of paragraphs (a) to (g) of subsection (1) is to be disregarded for the purposes of that subsection to the extent that—

(a) the amount represents a dividend payable in respect of preference shares, and

(b) those shares are recognised as a liability in the financial statements of the group for the period.

333 Group members with income from oil extraction subject to particular tax treatment in UK

(1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group ("the external finance amount") must be disregarded if conditions A and B are met.

(2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a ring fence trade (see section 277 of CTA 2010).

(3) Condition B is that the external finance amount falls to be brought into account for the purposes of corporation tax in calculating the profits of that trade for that accounting period.

(4) In this section "relevant accounting period", in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

334 Group members with income from shipping subject to particular tax treatment in UK

(1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group ("the external finance amount") must be disregarded if conditions A and B are met.

(2) Condition A is that a member of the worldwide group is, for a relevant accounting period, a tonnage tax company for the purposes of Schedule 22 to FA 2000.

(3) Condition B is that the external finance amount—

(a) is taken into account in computing relevant shipping profits of that company for that accounting period, or

(b) comprises deductible finance costs outside the ring fence, to the extent that they are adjusted under paragraph 61 or 62 of Schedule 22 to FA 2000.

(4) In this section—

"relevant accounting period", in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group, and

"relevant shipping profits" has the same meaning as in Schedule 22 to FA 2000 (see Part 6 of that Schedule).

335 Group members with income from property rental subject to particular tax treatment in UK

(1) In calculating the available amount, an amount disclosed in the financial statements of the worldwide group ("the external finance amount") must be disregarded if conditions A and B are met.

(2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate business under section 541 of CTA 2010 (ring-fencing of property rental business).

(3) Condition B is that the external finance amount falls to be brought into account in calculating the profits arising from that business in that accounting period.

(4) In this section "relevant accounting period", in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account of the worldwide group.

336 Meaning of accounting expressions used in this Chapter

Subject to any provision to the contrary, expressions used in this Chapter have the meaning for the time being given by international accounting standards.

CHAPTER 10

OTHER INTERPRETATIVE PROVISIONS

337 The worldwide group

In this Part "the worldwide group" means any group of entities that—

(a) is large, and
(b) contains one or more relevant group companies.

338 Meaning of "group"

(1) Subject to subsections (2) and (3), in this Part "group" has the meaning for the time being given by international accounting standards.

(2) If a group would (apart from this subsection) contain more than one ultimate parent, each of those ultimate parents, together with its subsidiaries, is to be treated as a separate group.

(3) An entity that is a parent of the ultimate parent of a group is to be treated as not being a member of the group.

(4) Subsections (2) and (3) do not apply for the purposes of section 339.

339 Meaning of "ultimate parent"

(1) For the purposes of this Part, "ultimate parent", in relation to a group, means an entity that—
(a) is a member of the group,
(b) is a corporate entity or a relevant non-corporate entity,
(c) is not a subsidiary (whether direct or indirect) of a corporate entity or a relevant non-corporate entity, and
(d) is not a collective investment scheme.

(2) In this section "collective investment scheme" has the meaning given by section 235 of FISMA 2000.

340 Meaning of "corporate entity"

(1) In this Part "corporate entity" means (subject to subsection (4))—
(a) a body corporate incorporated under the laws of any part of the United Kingdom or any other country or territory, or
(b) any other entity that meets conditions A and B.

(2) Condition A is that the person or persons who have an interest in the entity hold shares in the entity, or interests corresponding to shares.

(3) Condition B is that the amount of profits to which each person who has an interest in the entity is entitled depends upon a decision that—
(a) is taken by the entity or members of the entity, and
(b) is taken after the period in which the profits arise.

(4) The following are not corporate entities for the purposes of this Part—
(a) the Crown,
(b) a Minister of the Crown,
(c) a government department,
(d) a Northern Ireland department, or
(e) a foreign sovereign power.

341 Meaning of "relevant non-corporate entity"

(1) In this Part "relevant non-corporate entity" means an entity—

(a) that is not a corporate entity, and

(b) in relation to which conditions A and B are met.

(2) Condition A is that shares or other interests in the entity are listed on a recognised stock exchange.

(3) Condition B is that the shares or other interests in the entity are sufficiently widely held.

(4) For this purpose shares or other interests in an entity are "sufficiently widely held" if no participator in the entity holds more than 10% by value of all the shares or other interests in the entity.

(5) Section 454 of CTA 2010 (meaning of participator) applies for the purposes of this section.

(6) In the application of that provision for those purposes, references to a company are to be treated as references to an entity.

342 Treatment of entities stapled to corporate, or relevant non-corporate, entities

(1) If a corporate entity is stapled to another entity, the two entities are treated for the purposes of this Part as if—

(a) they were one entity, and

(b) that one entity were a corporate entity.

(2) If a relevant non-corporate entity is stapled to another entity, the two entities are treated as if—

(a) they were one entity, and

(b) that one entity were a relevant non-corporate entity.

(3) For the purposes of this section, an entity ("entity A") is "stapled" to another ("entity B") if, in consequence of the nature of the rights attaching to the shares or other interests in entity A (including any terms or conditions attaching to the right to transfer the interests), it is necessary or advantageous for a person who has, disposes of or acquires shares or other interests in entity A also to have, to dispose of or to acquire shares or other interests in entity B.

343 Treatment of business combinations

(1) This section applies if two corporate entities—

(a) are not subsidiaries of the same entity, but

(b) are treated under international accounting standards as a single economic entity by reason of being a business combination achieved by contract.

(2) The two entities are treated for the purposes of this Part as if—

(a) they were one entity, and

(b) that one entity were a corporate entity.

344 Meaning of "large" in relation to a group

(1) For the purposes of this Part, a group is "large" at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 ("the Annex").

(2) In its application as a result of subsection (1), the Annex has effect subject to the following qualifications.

(3) If a member of the group is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b).

(4) Article 3 has effect with the omission of paragraph (5) (declaration in good faith where control cannot be determined etc).

(5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.

(6) Article 4 has effect with the omission of—

(a) the second sentence of paragraph (1) (data to be taken into account from date of closure of accounts),

(b) paragraph (2) (no change of status unless ceilings exceeded for two consecutive periods), and

(c) paragraph (3) (estimate in case of newly established enterprise).

345 Meaning of "UK group company" and "relevant group company"

(1) This section applies for the purposes of this Part.

(2) A company is a "UK group company" if—

(a) it meets condition A, and

(b) it is a member of the worldwide group.

(3) A company is a "relevant group company" if—

(a) it meets condition A, and

(b) it meets condition B.

(4) Condition A is that the company—

(a) is resident in the United Kingdom, or

(b) is not resident in the United Kingdom and is carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(5) Condition B is that the company is either—

(a) the ultimate parent of the worldwide group, or

(b) a relevant subsidiary of the ultimate parent of the worldwide group.

(6) A company is a "relevant subsidiary" of the ultimate parent of the worldwide group if the company is a member of the worldwide group and—

(a) the company is a 75% subsidiary of the ultimate parent,

(b) the ultimate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company, or

(c) the ultimate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up.

(7) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (6)(b) and (c) as it applies for the purposes of section 151(4) of that Act.

346 Financial statements of the worldwide group

(1) This section applies for the purposes of this Part.

(2) References to financial statements of the worldwide group are to consolidated financial statements of the ultimate parent and its subsidiaries; and references to a balance sheet of the worldwide group are to be read accordingly.

(3) References to a period of account of the worldwide group are to a period in respect of which financial statements of the worldwide group are drawn up.

347 Non-compliant financial statements of the worldwide group

(1) This section applies if—

(a) financial statements of the worldwide group are drawn up in respect of a period,

(b) those financial statements are not acceptable, and

(c) the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.

(2) This Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the period.

(3) For the purposes of this section, financial statements are "acceptable" if—

(a) they are drawn up in accordance with international accounting standards,

(b) they meet such conditions relating to accounting standards, or accounting principles or practice, as may be specified in regulations made by the Commissioners, or

(c) conditions A, B and C are met.

(4) Condition A is that—

(a) the companies whose results are included in the financial statements, and

(b) the companies whose results would be included in IAS financial statements of the worldwide group for the same period, were such statements drawn up,

are the same.

(5) Condition B is that—

(a) the transactions whose results are reflected in the amounts mentioned in section 332(1)(a) to (g) in the financial statements, and

(b) the transactions whose results would be reflected in those amounts in IAS financial statements of the worldwide group for the same period, were such statements drawn up,

are the same.

(6) Condition C is that the amounts mentioned in section 332(1)(a) to (d) in the financial statements are calculated using the effective interest method.

(7) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

348 Non-existent financial statements of the worldwide group

(1) This section applies if financial statements of the worldwide group are not drawn up in respect of a period ("the relevant period").

(2) If the relevant period is 12 months or less, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of the relevant period.

(3) If the relevant period is more than 12 months, this Part (apart from this section) applies as if IAS financial statements had been drawn up in respect of each period to which subsection (4) applies.

(4) This subsection applies to a period if—

(a) it is the first period of 12 months falling within the relevant period,

(b) it is a period of 12 months falling within the relevant period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or

(c) it is a period of less than 12 months that—

(i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and

(ii) ends at the end of the relevant period.

(5) In this section, references to IAS financial statements of the worldwide group for a period are to financial statements of the group for the period drawn up in accordance with international accounting standards.

349 References to amounts disclosed in financial statements

(1) References in this Part to amounts disclosed in financial statements include an amount comprised in an amount so disclosed.

(2) References in this Part to amounts disclosed in financial statements do not include, in the case of an amount that—

(a) is an amount mentioned in section 332(1)(a) to (g), and

(b) has been capitalised and is accordingly included in the balance sheet comprised in the financial statements,

any part of that amount that was included in a balance sheet comprised in financial statements for an earlier period.

(3) References in this Part to amounts disclosed in financial statements do not include—

(a) any amount disclosed in respect of a group pension scheme, or

(b) any amount disclosed in respect of any entity that is not a member of the group.

350 Translation of amounts disclosed in financial statements

(1) References in this Part (except in Chapter 2) to an amount disclosed in financial statements for a period are, where the amount is expressed in a currency other than sterling, to that amount translated into its sterling equivalent.

(2) The exchange rate by reference to which the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

351 Expressions taking their meaning from international accounting standards

(1) For the purposes of this Part, the following expressions have the meaning for the time being given by international accounting standards—

"effective interest method",

"entity",

"parent", and

"subsidiary".

(2) The Commissioners may by order amend this section.

352 Meaning of "relevant accounting period"

For the purposes of this Part, a "relevant accounting period" of a company, in relation to a period of account of the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

353 Other expressions

In this Part—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"FISMA 2000" means the Financial Services and Markets Act 2000,

"FSA Handbook" means the Handbook made by the Financial Services Authority under FISMA 2000, and

"HMRC" means Her Majesty's Revenue and Customs.

PART 8

OFFSHORE FUNDS

Tax treatment of participants in offshore funds

354 Power to make regulations about tax treatment of participants

(1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, corporation tax or capital gains tax.

(2) Regulations under subsection (1) may, in particular, make special provision about the treatment of participants in an offshore fund comprising—

(a) a part of umbrella arrangements (see section 360), or

(b) arrangements relating to a class of interest in other arrangements (see section 361).

(3) Regulations under subsection (1) may, in particular—

(a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, corporation tax or capital gains tax,

(b) make provision about the supply of information by offshore funds, or trustees or officers of offshore funds—

(i) to Her Majesty's Revenue and Customs, or

(ii) to participants,

(c) make provision about the preparation of accounts and the keeping of records by offshore funds or trustees or officers of offshore funds, and

(d) make other provision about the administration of offshore funds.

(4) Regulations under subsection (1) may, in particular, make provision consequential on the repeal by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) of Chapter 5 of Part 17 of ICTA (offshore funds).

(5) Regulations under subsection (1) may, in particular—

(a) provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter,

(b) make provision by reference to standards or other documents issued by any person,

(c) modify an enactment (whenever passed or made),

(d) make different provision for different cases or different purposes, and

(e) make incidental, consequential, supplementary and transitional provision and savings.

(6) Regulations under subsection (1) may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.

(7) In this section—

"enactment" includes subordinate legislation (within the meaning of the Interpretation Act 1978), and

"modify" includes amend, repeal or revoke.

355 Meaning of "offshore fund"

(1) In section 354 "offshore fund" means—

(a) a mutual fund constituted by a body corporate resident outside the United Kingdom,

(b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or

(c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom.

(2) Subsection (1)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.

(3) In this section—

"body corporate" does not include a limited liability partnership, and

"co-ownership" is not restricted to the meaning of that term in the law of any part of the United Kingdom.

(4) See also section 151W(b) of TCGA 1992, section 564U(b) of ITA 2007 and section 519(4)(b) of CTA 2009 (which have the effect that investment bond arrangements are not an offshore fund for the purposes of section 354).

356 Meaning of "mutual fund"

(1) In section 355 "mutual fund" means arrangements with respect to property of any description (including money) that meet conditions A, B and C.

(2) Subsection (1) is subject—

(a) to the exceptions made by or under sections 357 and 359, and

(b) to sections 360 and 361.

(3) Condition A is that the purpose or effect of the arrangements is to enable the participants—

(a) to participate in the acquisition, holding, management or disposal of the property, or

(b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(4) Condition B is that the participants do not have day-to-day control of the management of the property.

(5) For the purposes of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.

(6) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—

(a) the net asset value of the property that is the subject of the arrangements, or

(b) an index of any description.

(7) The Treasury may by regulations amend condition C.

(8) Regulations under subsection (7) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

357 Exceptions to definition of "mutual fund"

(1) Arrangements are not a mutual fund for the purposes of section 355 if—

(a) condition D is met, and

(b) condition E or F is met.

(2) Condition D is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an

investment in the arrangements on a basis mentioned in section 356(6) only in the event of the winding up, dissolution or termination of the arrangements.

(3) Condition E is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

(4) Condition F is that—

(a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements,

(b) subsection (5), (6) or (7) applies, and

(c) the arrangements are not designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.

(5) This subsection applies if none of the assets that are the subject of the arrangements is a relevant income-producing asset (see section 358).

(6) This subsection applies if, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.

(7) This subsection applies if—

(a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and

(b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.

(8) For the purposes of this section the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

358 Meaning of "relevant income-producing asset"

(1) This section has effect for the purposes of section 357.

(2) An asset is a relevant income-producing asset if it produces income on which, if it were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (but see subsections (3) and (4)).

(3) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—

(a) the asset (taking account of the hedging), or

(b) any product of the hedging arrangements.

(4) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets (as defined by this section).

359 Power to make regulations about exceptions to definition of "mutual fund"

(1) The Treasury may by regulations amend or repeal any provision of section 357 or 358.

(2) The Treasury may by regulations provide that arrangements are not a mutual fund for the purposes of section 355—

(a) in specified circumstances, or

(b) if they are of a specified description.

(3) Regulations under this section may include provision having effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.

(4) Regulations under subsection (1) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

Supplementary

360 Treatment of umbrella arrangements

(1) This section has effect for the purposes of this Part.

(2) In the case of umbrella arrangements (see section 363)—

(a) each part of the umbrella arrangements is to be treated as separate arrangements, and

(b) the umbrella arrangements are to be disregarded.

(3) Subsection (2)(a) is subject to section 361.

361 Treatment of arrangements comprising more than one class of interest

(1) This section has effect for the purposes of this Part.

(2) Where there is more than one class of interest in arrangements (the "main arrangements")—

(a) the arrangements relating to each class of interest are to be treated as separate arrangements, and

(b) the main arrangements are to be disregarded.

(3) In relation to umbrella arrangements, "class of interest" does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

362 Meaning of "participant" and "participation"

(1) In this Part references to "participant", in relation to arrangements (or a fund), are to a person taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise.

(2) In this Part references (however expressed) to participation, in relation to arrangements (or a fund), are to be read in accordance with subsection (1).

363 Meaning of "umbrella arrangements" and "part of umbrella arrangements"

(1) In this Part "umbrella arrangements" means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.

(2) In this Part references to a part of umbrella arrangements are to the arrangements relating to a separate pool.

PART 9

AMENDMENTS TO RELOCATE PROVISIONS OF TAX LEGISLATION

364 Oil activities

Schedule 1, which inserts a new Chapter 16A (oil activities) in Part 2 (trading income) of ITTOIA 2005, has effect.

365 Alternative finance arrangements

Schedule 2, which—

(a) inserts a new Part 10A in ITA 2007 (see Part 1 of the Schedule),

(b) inserts a new Chapter 4 in Part 4 of TCGA 1992 (see Part 2 of the Schedule), and

(c) makes other amendments (see Part 3 of the Schedule),

has effect.

366 Power to amend the alternative finance provisions

(1) The Treasury may by order amend the alternative finance provisions.

(2) The amendments which may be made by such an order include—

(a) the variation of provision already included in the alternative finance provisions, and

(b) the introduction into the alternative finance provisions of new provision relating to alternative finance arrangements.

(3) In subsection (2)(b) "alternative finance arrangements" means arrangements which in the Treasury's opinion—

(a) equate in substance to a loan, deposit or other transaction of a kind that generally involves the payment of interest, but

(b) achieve a similar effect without including provision for the payment of interest.

(4) An order under subsection (1) may, in particular—

(a) make provision of a kind similar to provision already made by the alternative finance provisions,

(b) make other provision about the treatment for the purposes of the Tax Acts of arrangements to which the order applies,

(c) make provision generally or only in relation to specified cases or circumstances,

(d) make different provision for different cases or circumstances, and

(e) make incidental, supplemental, consequential and transitional provision and savings.

(5) An order making consequential provision under subsection (4)(e) may, in particular, include provision amending a provision of the Tax Acts.

(6) In this section "the alternative finance provisions" means—

(a) section 367A of ICTA,

(b) Chapter 4 of Part 4 of TCGA 1992,

(c) sections 372A to 372D, Part 10A and section 1005(2A) of ITA 2007,

(d) Chapter 6 of Part 6 of CTA 2009,

(e) sections 110, 256 to 259 and 1019 of CTA 2010.

(7) An order under this section that—

(a) includes such amendments as are mentioned in subsection (2)(b), or

(b) amends an enactment not contained in the alternative finance provisions but contained in an Act,

may only be made if a draft of the statutory instrument containing the order has been laid before and approved by a resolution of the House of Commons.

367 Leasing arrangements: finance leases and loans

Schedule 3, which inserts—

(a) a new Part 11A in ITA 2007 (leasing arrangements: finance leases and loans), and

(b) a new section 37A in TCGA 1992 (consideration on disposal of certain leases),

has effect.

368 Sale and lease-back etc

Schedule 4, which inserts a new Part 12A in ITA 2007 (sale and lease-back etc), has effect.

369 Factoring of income etc

Schedule 5, which inserts new Chapters 5B and 5C (finance arrangements, and loan or credit transactions) in Part 13 of ITA 2007 (anti-avoidance), has effect.

370 UK representatives of non-UK residents

Schedule 6, which inserts—

(a) new Chapters 2B and 2C in Part 14 of ITA 2007 (income tax: UK representatives of non-UK residents), and

(b) a new Part 7A in TCGA 1992 (capital gains tax: UK representatives of non-UK residents),

has effect.

371 Miscellaneous relocations

Schedule 7 (amendments to relocate some miscellaneous tax enactments) has effect.

PART 10

GENERAL PROVISIONS

Subordinate legislation

372 Orders and regulations

(1) Any power of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make any order or regulations under this Act is exercisable by statutory instrument.

(2) Any statutory instrument containing any order or regulations made by the Treasury or the Commissioners for Her Majesty's Revenue and Customs under this Act is subject to annulment in pursuance of a resolution of the House of Commons.

(3) Subsection (2) does not apply—

(a) in relation to regulations under section 7 (double taxation relief: general regulations),

(b) in relation to regulations under section 354(1) or 359(2) (offshore funds) if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons,

(c) in relation to an order under section 377(2) (transitional or saving provision in connection with coming into force of this Act), or

(d) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations.

(4) Section 828 of ICTA (which includes provision about orders made before 1 April 2010 under provisions of the Corporation Tax Acts not contained in ICTA) does not apply in relation to an order made by the Treasury under this Act before 1 April 2010.

Interpretation

373 Abbreviated references to Acts

In this Act—

"CAA 2001" means the Capital Allowances Act 2001,

"CTA 2009" means the Corporation Tax Act 2009,

"CTA 2010" means the Corporation Tax Act 2010,

"FA", followed by a year, means the Finance Act of that year,

"F(No.2)A", followed by a year, means the Finance (No. 2) Act of that year,

"ICTA" means the Income and Corporation Taxes Act 1988,

"ITA 2007" means the Income Tax Act 2007,

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003,

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005,

"TCGA 1992" means the Taxation of Chargeable Gains Act 1992, and
"TMA 1970" means the Taxes Management Act 1970.

Final provisions

374 Minor and consequential amendments

Schedule 8 (minor and consequential amendments, including amendments for purposes connected with other tax law rewrite Acts) has effect.

375 Power to make consequential provision

(1) The Treasury may by order make such provision as the Treasury consider appropriate in consequence of this Act.

(2) The power conferred by subsection (1) may not be exercised after 31 March 2013.

(3) An order under this section may amend, repeal or revoke any provision made by or under an Act.

(4) An order under this section may contain provision having retrospective effect.

(5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

(6) In subsection (3) "Act" includes an Act of the Scottish Parliament and Northern Ireland legislation.

376 Power to undo changes

(1) The Treasury may by order make provision, in relation to a case in which the Treasury consider that a provision of this Act changes the effect of the law, for the purpose of returning the effect of the law to what it would have been if this Act had not been passed.

(2) The power conferred by subsection (1) may not be exercised after 31 March 2013.

(3) An order under this section may amend, repeal or revoke any provision made by or under—

(a) this Act, or

(b) any other Act.

(4) An order under this section may contain provision having retrospective effect.

(5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

(6) In subsection (3)(b) "Act" includes an Act of the Scottish Parliament and Northern Ireland legislation.

377 Transitional provisions and savings

(1) Schedule 9 (transitional provisions and savings) has effect.

(2) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.

(3) An order under this section may contain provision having retrospective effect.

378 Repeals and revocations

(1) Schedule 10 (repeals and revocations, including of spent enactments and including repeals for purposes connected with other tax law rewrite Acts) has effect.

(2) If—

(a) CTA 2010 repeals or revokes a provision and the repeal or revocation is for corporation tax purposes only (see section 1181(2) of that Act), and

(b) this Act also repeals or revokes the provision,

the repeal or revocation of the provision by this Act is for all purposes other than corporation tax purposes.

379 Index of defined expressions

(1) Schedule 11 (index of defined expressions that apply for purposes of Parts 2 to 8) has effect.

(2) That Schedule lists the places where some of the expressions used in Parts 2 to 8 are defined or otherwise explained.

380 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).

(2) An amendment, repeal or revocation contained in Schedule 7, 8 or 10 has the same extent as the provision amended, repealed or revoked.

381 Commencement

(1) This Act comes into force on 1 April 2010 and has effect—

(a) for corporation tax purposes, for accounting periods ending on or after that day,

(b) for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years, and

(c) for petroleum revenue tax purposes, for chargeable periods beginning on or after 1 July 2010.

(2) Subsection (1) does not apply to the following provisions (which therefore come into force on the day on which this Act is passed)—

(a) section 372,

(b) section 373,

(c) the amendments in TCGA 1992 and ITA 2007 made by Part 13 of Schedule 8,

(d) section 374 so far as relating to those amendments,

(e) section 375,

(f) section 376,

(g) section 377(2) and (3),
(h) section 380,
(i) this section, and
(j) section 382.

382 Short title

This Act may be cited as the Taxation (International and Other Provisions) Act 2010.