

## SCHEDULES

### SCHEDULE 24

Section 130.

#### EXCHANGE GAINS AND LOSSES

#### PART I

#### AMENDMENTS OF FINANCE ACT 1993

##### *Introduction*

- 1 Chapter II of Part II of the Finance Act 1993 (exchange gains and losses) shall be deemed to have been enacted with the modifications set out in paragraphs 2 to 6 below.

##### *Trading gains and losses*

- 2 In section 128 (trading gains and losses) the following subsections shall be inserted after subsection (10)—

“(10A) In a case where—

- (a) an exchange gain of a trade or part of a trade or an exchange loss of a trade or part of a trade would (apart from this subsection) accrue to a company as regards a liability consisting of a duty to settle under a qualifying debt, and
- (b) a charge is allowed to the company in respect of the debt under section 338 of the Taxes Act 1988 (allowance of charges on income and capital),

the exchange gain or loss shall be treated as not accruing.

(10B) A charge shall be treated as allowed as mentioned in subsection (10A) above if—

- (a) it would be so allowed if the company’s total profits were sufficient,
- (b) it would be so allowed if the duty mentioned in that subsection were settled, and if in settling it payment were made out of the company’s profits brought into charge to corporation tax, or
- (c) it would be so allowed if the facts were as mentioned in both paragraph (a) and paragraph (b) above.”

##### *Non-trading gains and losses*

- 3 (1) Section 129 (non-trading gains and losses) shall be amended as follows.
- (2) In subsection (8) (no non-trading exchange gain or loss where a charge is allowed) in paragraph (b) the words “or the circumstances are such that a charge would be so allowed if the duty were settled” shall be omitted.

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(3) The following subsection shall be inserted after subsection (8)—

“(8A) A charge shall be treated as allowed as mentioned in subsection (8) above if—

- (a) it would be so allowed if the company’s total profits were sufficient,
- (b) it would be so allowed if the duty mentioned in that subsection were settled, and if in settling it payment were made out of the company’s profits brought into charge to corporation tax, or
- (c) it would be so allowed if the facts were as mentioned in both paragraph (a) and paragraph (b) above.”

*Assets and liabilities*

4 (1) Section 153 (qualifying assets and liabilities) shall be amended as follows.

(2) In subsection (4) (certain convertible securities excluded from qualifying assets) for the words from “which” to “shares” there shall be substituted “and did not represent a normal commercial loan when it was created”.

(3) In subsection (6) (certain convertible securities excluded from qualifying liabilities) for the words from “which” to “shares” there shall be substituted “and did not represent a normal commercial loan when it was created”.

(4) The following subsection shall be inserted after subsection (11)—

“(11A) In subsections (4) and (6) above “normal commercial loan” has the meaning which would be given by sub-paragraph (5) of paragraph 1 of Schedule 18 to the Taxes Act 1988 if—

- (a) for paragraph (a)(i) to (iii) of that sub-paragraph there were substituted the words “corporate bonds (within the meaning of section 117 of the Taxation of Chargeable Gains Act 1992)”, and
- (b) paragraphs (b) and (c) of that sub-paragraph were omitted.”

*Chargeable gains*

5 In Schedule 17 (chargeable gains) in paragraph 4 (no chargeable gain or allowable loss on disposal of certain debts other than debts on securities) the following sub-paragraph shall be inserted after sub-paragraph (2)—

“(2A) In sub-paragraph (1)(e) above “security” includes a debenture that is deemed to be a security for the purposes of section 251 of the 1992 Act by virtue of subsection (6) of that section (debentures issued on reorganisation etc.)”.

6 In Schedule 17, the following paragraph shall be substituted for paragraph 5—

“5 (1) This paragraph applies where—

- (a) a right to settlement under a debt on a security is a qualifying asset,
- (b) there occurs in relation to the security an event which is a disposal of it for the purposes of the 1992 Act by a qualifying company or which would be such a disposal but for section 127 of that Act (reorganisations),

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- (c) the event occurs on or after the company's commencement day, and
  - (d) immediately before the occurrence of the event the company did not hold the right in exempt circumstances.
- (2) In applying section 117 of that Act (qualifying corporate bonds) in relation to the event mentioned in sub-paragraph (1) above or to a transaction (if any) falling within sub-paragraph (4) below, that section shall be construed as if subsection (1)(b) (corporate bond must be in sterling) were omitted.
- (3) Where the settlement currency of the debt is a currency other than sterling, then, in applying section 117 of the 1992 Act in relation to the event mentioned in sub-paragraph (1) above or to a transaction (if any) falling within sub-paragraph (4) below—
- (a) the definition of normal commercial loan for the purposes of section 117(1)(a) shall have effect, and be treated as always having had effect, as if paragraphs (b) and (c) of paragraph 1(5) of Schedule 18 to the Taxes Act 1988 had always been omitted;
  - (b) section 117 shall be construed as if subsection (10) (securities issued within group) were omitted.
- (4) A transaction falls within this sub-paragraph if—
- (a) it is a transaction in relation to which sections 127 to 130 of the 1992 Act apply by virtue of any provision of Chapter II of Part IV of that Act, or would apply apart from section 116 of that Act,
  - (b) it is a transaction under which the qualifying company becomes entitled to the right,
  - (c) it occurs on or after the company's commencement day but before the event mentioned in sub-paragraph (1) above, and
  - (d) the company holds the right at all times following the time when it becomes entitled to it and preceding the event mentioned in sub-paragraph (1) above.
- (5) Paragraph 3 above applies for the purposes of this paragraph as if references to currency were references to a right."

## PART II

### AMENDMENTS OF OTHER PROVISIONS

#### *Introduction*

- 7 Paragraphs 8 to 12 below shall be deemed to have come into force on the day appointed under section 165(7)(b) of the Finance Act 1993 (which relates to exchange gains and losses).

#### *Interest on overdue tax*

- 8 In section 87A of the Taxes Management Act 1970 (interest on overdue tax) in subsection (4A) (claims under section 131(5) or (6) of the Finance Act 1993)—
- (a) for paragraph (c) there shall be substituted—

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- “(c) if the claim had not been made, there would be an amount or, as the case may be, an additional amount of corporation tax for the earlier period which would carry interest in accordance with this section,” and
- (b) for the words from “then” to the end there shall be substituted “then, for the purposes of the determination at any time of whether any interest is payable under this section or of the amount of interest so payable, the amount mentioned in paragraph (c) above shall be taken to be an amount of unpaid corporation tax for the earlier period except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable as mentioned in subsection (1) above.
- 9 (1) In subsection (4) of that section (amounts of surplus advance corporation tax) for the words “subsection (7)” there shall be substituted “subsections (4B) and (7)”.
- (2) After subsection (4A) of that section there shall be inserted—
- “(4B) Where, in a case falling within subsection (4A)(a) and (b) above—
- (a) there is in the earlier period, as a result of the claim under section 131(5) or (6) of the Finance Act 1993, an amount of surplus advance corporation tax, as defined in section 239(3) of the principal Act, and
- (b) pursuant to a claim under the said section 239(3), the whole or any part of that amount is to be treated for the purposes of section 239 of the principal Act as discharging liability for an amount of corporation tax for an accounting period before the earlier period,
- the claim under the said section 239(3) shall be disregarded for the purposes of subsection (4A) above but subsection (4) above shall have effect in relation to that claim as if the reference in the words after paragraph (c) to the later period within the meaning of subsection (4) above were a reference to the period which, in relation to the claim under section 131(5) or (6) of the Finance Act 1993, would be the later period for the purposes of subsection (4A) above.”
- 10 In section 91 of the Taxes Management Act 1970 (effect on interest of reliefs) in subsection (1B) (provisions to which section 91(1A) is subject) after the words “section 87A(4)” there shall be inserted “, (4A), (4B)”.

*Interest on tax overpaid*

- 11 In section 826 of the Taxes Act 1988 (interest on tax overpaid) in subsection (7C) (claims under section 131(5) or (6) of the Finance Act 1993)—
- (a) at the end of paragraph (c) there shall be inserted “or of income tax in respect of a payment received by the company in that accounting period”, and
- (b) for the words from “repayment of corporation tax” to “resulting from” there shall be substituted “repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of”.
- 12 (1) In subsection (7) of that section (amounts of surplus advance corporation tax) for the words “subsection (7AA)” there shall be substituted “subsections (7AA) and (7CA)”.

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- (2) After subsection (7C) of that section there shall be inserted—
- “(7CA) Where, in a case falling within subsection (7C)(a) and (b) above—
- (a) there is in the earlier period, as a result of the claim under section 131(5) or (6) of the Finance Act 1993, an amount of surplus advance corporation tax, as defined in section 239(3), and
  - (b) pursuant to a claim under section 239(3), the whole or any part of that amount is to be treated for the purposes of section 239 as discharging liability for an amount of corporation tax for an accounting period before the earlier period,
- then subsection (7) above shall have effect in relation to the claim under section 239(3) as if the reference in the words after paragraph (c) to the later period within the meaning of subsection (7) above were a reference to the period which, in relation to the claim under section 131(5) or (6) of the Finance Act 1993, would be the later period for the purposes of subsection (7C) above.”
- (3) In section 102 of the Finance Act 1989 (surrender of company tax refund etc. within group) in subsection (4A) (cases where any of subsections (7) to (7C) of section 826 of the Taxes Act 1988 applies) for “(7C)” there shall be substituted “(7CA)”.
- (4) Subject to sub-paragraph (5) below, section 826(7CA) of the Taxes Act 1988 (inserted by sub-paragraph (2) above) shall apply in relation to any claim under section 131(5) or (6) of the Finance Act 1993 as a result of which there is an amount of surplus advance corporation tax in an accounting period ending after 30th September 1993.
- (5) Where there is a claim in relation to which section 826(7CA) would, but for this sub-paragraph, apply, and—
- (a) the case is one falling within section 826(7CA)(a) and (b), but
  - (b) the period mentioned in section 826(7CA)(b) ended on or before 30th September 1993,
- section 826(7CA) shall not apply but section 825(4)(a) of the Taxes Act 1988 shall have effect as if the reference to the accounting period in the case of which the amount of surplus advance corporation tax arose were a reference to the period which, in relation to the claim, would be the later period for the purposes of section 826(7C) of that Act.