

SCHEDULES

SCHEDULE 38

Section 181

SALE AND REPURCHASE OF SECURITIES ETC

Increase of repurchase price of UK securities by amount of deemed manufactured dividend

- 1 In section 737C of the Taxes Act 1988 (deemed manufactured payments)—
- (a) in subsection (3)(b) (repurchase price of UK equities to be treated as increased by gross amount of deemed manufactured dividend), omit “gross”, and
 - (b) omit subsection (4) (definition of gross amount).

Deemed manufactured payment where transferor or connected person makes payment representative of dividend

- 2 (1) Section 737A of the Taxes Act 1988 (deemed manufactured payments) is amended as follows.
- (2) In subsection (1), for “the conditions set out in subsection (2) below” substitute “either the conditions set out in subsection (2) below or the conditions set out in subsection (2A) below”.
 - (3) In subsection (2), for “conditions” substitute “first set of conditions referred to in subsection (1) above”.
 - (4) After that subsection insert—
 - “(2A) The second set of conditions referred to in subsection (1) above are that—
 - (a) a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
 - (b) the transferor or a person connected with him is required under any agreement mentioned in subsection (1) above to make a payment representative of the dividend,
 - (c) there is no requirement under any such agreement for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
 - (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account is taken of the circumstances referred to in paragraphs (a) to (c).”
 - (5) In subsection (3), for “subsection (2)” substitute “subsections (2) and (2A)”.
 - (6) In subsection (5)(a), after “(2)(a)” insert “or (2A)(a)”.
- 3 In section 737C of the Taxes Act 1988 (deemed manufactured payments: further provisions), after “737A(2)(a)” (in each place) insert “or (2A)(a)”.

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Provisions to cover both “put” and “call” options

- 4 In section 727A(1) of the Taxes Act 1988 (accrued income scheme not to apply to transfers of securities under repo agreements), for the words from “and under” to the end of paragraph (b) substitute “and the transferor or a person connected with him—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
 - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.
- 5 In section 730A(1) of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities), for paragraph (b) substitute—
- “(b) the original owner or a person connected with him—
 - (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
 - (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises; and”.
- 6 In section 731(2D) of the Taxes Act 1988 (provisions about purchase and sale of securities not to apply to repo agreements etc) for the words from “and, in” to “is entitled” in paragraph (c) substitute “and the original owner—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement,
 - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises, or
 - (c) under that agreement or any related agreement, is entitled”.
- 7 In section 737A(1) of the Taxes Act 1988 (deemed manufactured payments), for the words from “and under” to the end of paragraph (b) substitute “and the transferor or a person connected with him—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
 - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.
- 8 In section 737E(8) of the Taxes Act 1988 (power to modify provisions about repo arrangements), for paragraph (b) substitute—
- “(b) that person or a person connected with him—
 - (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
 - (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.
- 9 In paragraph 12(4) of Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (c. 12) (exemptions for disposals by companies with substantial shareholding: effect of repurchase agreement), for paragraph (b) substitute—
- “(b) the original owner or a person connected with him—

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- (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
- (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.

Option premium to be reflected in sale price unless brought into account under derivative contracts provisions

- 10 In section 730A of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities), after subsection (8) insert—

“(8A) In this section references to the sale price are to be construed—

- (a) in a case where the securities are bought back by the transferor or a person connected with him in compliance with a requirement imposed in consequence of the exercise of an option acquired under the agreement to sell the securities or any related agreement, as references to what would otherwise be the sale price plus the amount of any consideration given for the option, and
- (b) in a case where the securities are so bought back in the exercise of an option so acquired, as references to what would otherwise be the sale price less the amount of any consideration so given,

unless the consideration is brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).”.

Exchange gains and losses

- 11 (1) Section 730A of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities) is amended as follows.

(2) In subsection (4) (adjustment of repurchase price), for “this section and sections 737A and 737C” substitute “the excepted provisions specified in subsection (4A) below”.

(3) At the end of that subsection add as a second sentence—

“This subsection is subject to subsection (4B) below.”.

(4) After that subsection insert—

“(4A) The excepted provisions are—

- (a) this section,
- (b) section 730BB, apart from subsection (7),
- (c) section 737A, and
- (d) section 737C.

(4B) Where section 730BB(7) has effect (repurchase price to be treated as increased or reduced for certain purposes), subsection (4) above does not have effect for any purpose other than that of determining the amount that falls to be increased or reduced under section 730BB(7).”.

- 12 After section 730B of the Taxes Act 1988 insert—

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“730BB Exchange gains and losses on sale and repurchase of securities

- (1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—
- (a) the circumstances are as set out in section 730A(1)(a) and (b);
 - (b) the company is the repurchaser of the securities or (subject to subsection (11) below) the interim holder;
 - (c) the conditions in subsection (2) or (3) below are satisfied; and
 - (d) subsection (10) below does not prevent this section from applying,
- and references to a relationship to which this section applies, and to a company’s being a party to such a relationship, shall be construed accordingly.
- (2) The conditions in this subsection are that—
- (a) the sale price and the repurchase price are expressed in a currency other than sterling;
 - (b) there is a difference between—
 - (i) the sterling equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
 - (ii) the sterling equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”); and
 - (c) the case is not one where section 93 of the Finance Act 1993 (accounts of a company in a currency other than sterling) applies in relation to the company.
- (3) The conditions in this subsection are that—
- (a) the case is one where section 93 of the Finance Act 1993 applies in relation to the company;
 - (b) the sale price and the repurchase price are expressed in a currency other than the relevant foreign currency (within the meaning of that section) in relation to the company; and
 - (c) there is a difference between—
 - (i) the relevant foreign currency equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
 - (ii) the relevant foreign currency equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”).
- (4) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the first sum exceeds the second sum; or
 - (b) the company is the interim holder and the second sum exceeds the first sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange gain (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.

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- (5) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the second sum exceeds the first sum; or
 - (b) the company is the interim holder and the first sum exceeds the second sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange loss (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.
- (6) Where an exchange gain or loss is treated by virtue of subsection (4) or (5) above as arising to a company from a relationship to which this section applies—
- (a) Chapter 2 of Part 4 of the Finance Act 1996 shall have effect in relation to the exchange gain or loss as it would have effect if it were an exchange gain or loss (as the case may be) arising to the company from a loan relationship to which it is a party; but
 - (b) the only debits and credits to be brought into account for the purposes of that Chapter by virtue of this section in respect of the relationship to which this section applies are those relating to the exchange gains and losses,
- and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.
- (7) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 730A, 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—
- (a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and
 - (b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.
- (8) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—
- (a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships); or
 - (b) are to be treated as non-trading debits or credits,
- shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by that company.
- (9) To the extent that debits or credits fall to be brought into account by a company under section 82(2) of that Act in the case of a relationship to

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which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being a party to the relationship for the purposes of a trade carried on by the company.

(10) Except where regulations under section 737E otherwise provide, this section does not apply if—

- (a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or
- (b) all of the benefits and risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(11) Where—

- (a) the repurchase price is more than the sale price, so that by virtue of section 730A(2)(a) a payment of interest is treated as made by the repurchaser on a deemed loan from the interim holder; but
- (b) the payment of interest is treated as made to a person other than the interim holder,

references to the “interim holder” in subsections (1), (4) and (5) above shall be read as references to the person to whom the payment of interest is treated as made.

(12) Any reference in this section to the “relevant foreign currency equivalent” of an amount is, in the case of any company, a reference to the amount's equivalent expressed in the relevant foreign currency (within the meaning of section 93 of the Finance Act 1993) in relation to the company.

(13) Expressions used in this section and in section 730A have the same meaning in this section as in that section.”.

13 (1) Section 737E of the Taxes Act 1988 (power to modify sections 727A, 730A and 737A to 737C) is amended as follows.

(2) In subsections (1) and (2), after “730A” insert “, 730BB”.

(3) In subsection (3), after “730A” insert “or 730BB”.

(4) In consequence of the amendments made by this paragraph, the sidenote becomes “Power to modify sections 727A, 730A, 730BB and 737A to 737C”.

14 In section 100 of the Finance Act 1996 (c. 8) (exchange gains and losses on debts etc not arising from the lending of money), after subsection (2) insert—

“(2A) Where—

- (a) a company has a relationship to which section 730BB of the Taxes Act 1988 applies (exchange gains and losses on sale and repurchase of securities),
- (b) in the case of that relationship the circumstances mentioned in section 730A(1)(b) of that Act are such as to give rise to a money debt, and
- (c) the company stands, or has stood, in the position of a creditor or debtor as respects that money debt,

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the company shall not be regarded for the purposes of the Corporation Tax Acts as having, by reason of that money debt, a relationship to which this section applies, so far as relating to exchange gains and losses.”.

Exceptions

- 15 In section 727A(1) of the Taxes Act 1988 (accrued income scheme not to apply to transfers of securities under repo agreements), insert at the end “except in a case where section 730A of the Taxes Act 1988 is prevented from applying by subsection (8) of that section.”.
- 16 In section 730A(8)(b) of the Taxes Act 1988 (treatment of price differential on sale and repurchase: exclusion of cases where all benefits or risks are for interim holder), for “benefits or risks” substitute “benefits and risks”.
- 17 In section 737C(11A) of the Taxes Act 1988 (purposes for which deemed increase of repurchase price has effect), insert at the end “or where that section is prevented from applying by subsection (8) of that section.”.
- 18 (1) Paragraph 15 of Schedule 9 to the Finance Act 1996 (c. 8) (repo transactions not related transactions for purposes of loan relationship provisions) is amended as follows.
- (2) In sub-paragraph (3), after “means” insert “(subject to sub-paragraph (3A))”.
- (3) After that sub-paragraph insert—
- “(3A) Arrangements are not repo or stock-lending arrangements if they are excluded from section 730A of the Taxes Act 1988 by subsection (8) of that section.”.

Connected persons

- 19 In paragraph 15(3)(b) of Schedule 9 to the Finance Act 1996 (repo transactions not related transactions for purposes of loan relationship provisions), omit “, or a person connected with him,”.

Correction of section 730A(6B) of the Taxes Act 1988

- 20 In section 730A(6B) of the Taxes Act 1988 (trading loan relationship debits and credits falling to be brought into account under section 82(2))—
- (a) for “section 82(2) above” substitute “section 82(2) of the Finance Act 1996”, and
- (b) for “the Finance Act 1996” substitute “that Act”.

Commencement

- 21 (1) Paragraph 1 has effect in relation to repurchase prices becoming due on or after 9th April 2003.
- (2) Paragraphs 2 to 19 have effect in relation to agreements to sell securities made on or after 9th April 2003.
- (3) Paragraph 20 has effect in relation to accounting periods beginning on or after 1st October 2002.