

SCHEDULES

SCHEDULE 21

Section 43

FOREIGN EXCHANGE: ANTI-AVOIDANCE

Loan relationships

- 1 Chapter 3 of Part 5 of CTA 2009 (loan relationships: credits and debits to be taken into account) is amended as follows.
- 2 In section 328 (exchange gains and losses), after subsection (4) insert—
 - “(4A) Subsections (3) and (4) do not have effect to disapply subsection (1) in the case of an exchange gain arising in an accounting period of a company so far as—
 - (a) the exchange gain arises in relation to an asset or liability representing a loan relationship of the company,
 - (b) the loan relationship is part of arrangements that have a one-way exchange effect in relation to the company in the accounting period (see section 328A), and
 - (c) the arrangements cause the company or any other company to gain a tax advantage (other than a negligible tax advantage).”
- 3 After that section insert—

“328A Arrangements that have a “one-way exchange effect”

- (1) For the purposes of section 328 arrangements (“the arrangements”) have a “one-way exchange effect” in relation to a company (“company A”) in an accounting period of that company (“the relevant accounting period”) if the following two conditions are met.
- (2) The first condition is that the arrangements include an option or a relevant contingent contract.
- (3) The second condition is that, in relation to any day in the relevant accounting period (“the test day”)—
 - (a) amount A is not equal to amount B, and
 - (b) the difference between amounts A and B is not the same as it would be were those amounts calculated disregarding the matching rules.
- (4) Amount A is—
 - (a) the sum of the relevant exchange losses of company A, and of each company connected with company A, that arise in accounting periods of those companies that end on the test day, less
 - (b) the sum of the relevant exchange gains of those companies that arise in such accounting periods.

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- (5) Amount B is—
- (a) the sum of the relevant exchange gains of company A, and of each company connected with company A, that would have arisen in accounting periods of those companies that end on the test day, less
 - (b) the sum of the relevant exchange losses of those companies that would have arisen in such accounting periods,
- if exchange gains and losses of those companies in those accounting periods were calculated in accordance with section 328D (counterfactual currency movement assumptions).
- (6) For the purposes of subsections (4) and (5) an accounting period of company A, or of a company connected with company A, in which the test day falls and that does not end on that day is to be treated as if it did end on that day.
- (7) In this section “the matching rules” means—
- (a) section 328(3) and (4), and
 - (b) section 606(3) and (4).

328B Meaning of “relevant exchange gain” and “relevant exchange loss”

- (1) For the purposes of section 328A an exchange gain or loss of a company is “relevant” if—
- (a) it arises in relation to—
 - (i) an asset or liability representing a loan relationship to which the company is a party, or
 - (ii) a relevant contract to which the company is a party,
 - (b) the loan relationship or relevant contract is part of the arrangements, and
 - (c) a debit or credit in respect of the exchange gain or loss is required to be brought into account by the company for the purposes of corporation tax.
- (2) For the purposes of subsection (1)(c)—
- (a) the arrangements are to be treated as not having a one-way exchange effect in relation to the company for the purposes of section 328 or 606 (if they would otherwise have had such an effect), and
 - (b) sections 441 and 442 (loan relationships: unallowable purposes) and 690 to 692 (derivative contracts: unallowable purposes) are to be disregarded.

328C Meaning of “test day”

- (1) This section makes provision for the purposes of section 328A as to whether a day in an accounting period of company A is a “test day”.
- (2) In the case of arrangements that include one or more options, a day in the accounting period is a “test day” if it is—
- (a) a day on which such an option is exercised,
 - (b) a day on which such an option that is not exercised in the accounting period was capable of being exercised,

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- (c) a day on which company A, or a company connected with company A, ceased to be a party to such an option,
 - (d) a day on which a terms of such an option are varied, or
 - (e) the last day of the accounting period.
- (3) In the case of arrangements that include one or more relevant contingent contracts, a day in the accounting period is a “test day” if it is—
 - (a) a day on which an operative condition of such a contract is met,
 - (b) a day on which company A, or a company connected with company A, ceased to be a party to such a contract,
 - (c) a day on which a terms of such a contract are varied, or
 - (d) the last day of the accounting period.

328D Counterfactual currency movement assumptions

- (1) This section makes provision for the purposes of section 328A(5) as to the calculation of exchange gains and losses of a company arising in an accounting period of that company.
- (2) Where the relevant foreign currency appreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead depreciates (over the same period and in relation to the same currency) by that percentage.
- (3) Where the relevant foreign currency depreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead appreciates (over the same period and in relation to the same currency) by that percentage.
- (4) For provision as to the treatment of certain options for the purposes of the calculation in cases in which subsection (2) or (3) applies, see section 328E.
- (5) Except as provided for in that section, the calculation must be made on the basis of transactions in fact entered into (and not on the basis of transactions that would have been entered into on the assumption specified in subsection (2) or (3)).
- (6) In this section “relevant foreign currency” means—
 - (a) the currency in which the loan relationships or relevant contracts in respect of which the exchange gains or losses arise are denominated, or
 - (b) where the exchange gains or losses arise in respect of loan relationships or relevant contracts denominated in more than one currency, any of them.
- (7) References in this section to the “operating currency” of a company, in relation to an accounting period, are (subject to subsection (8)) to the currency in which profits or losses of the company arising in that accounting period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes are required to be computed by virtue of section 92(1), 92A(2), 92B(2)(a) or 92C(3)(a) of FA 1993 (foreign currency accounting).

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- (8) In relation to a loan relationship or relevant contract to which a company is deemed to be a party under—
- (a) section 381(2) and (3) (loan relationships involving firms), or
 - (b) section 620(2) (relevant contracts involving firms),
- references in this section to the “operating currency” of the company, in relation to an accounting period, are to the currency that would be the operating currency of that firm in that accounting period if that firm were a company.

328E Counterfactual currency movement assumptions: treatment of options

- (1) This section applies in relation to the calculation for the purposes of section 328A(5) of exchange gains and losses of a company arising in an accounting period of that company where—
- (a) the calculation is made on the assumption specified in subsection (2) or (3) of section 328D (“the relevant assumption”), and
 - (b) an option is part of the arrangements.
- (2) Subsection (3) applies if the option is exercised on the test day.
- (3) The option is to be treated as not having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would not have been exercised on that day.
- (4) Subsection (5) applies if the option is not exercised on the test day but was exercisable on that day.
- (5) The option is to be treated as having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would have been exercised on that day.

328F Meaning of “option”

- (1) In the Part 5 one-way exchange effect provisions “option” is to be construed as if section 580(2) and (3) (meaning of option) were omitted.
- (2) For the purposes of the Part 5 one-way exchange effect provisions—
- (a) section 584 (hybrid derivatives with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, the company treats” there were substituted “it is possible to regard”,
 - (b) section 585 (loan relationships with embedded derivatives) is to be construed as if in subsection (1) for the words “in accordance with generally accepted accounting practice a company treats” there were substituted “it is possible to regard”, and
 - (c) section 586 (other contracts with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, treats” there were substituted “it is possible to regard”.

328G Meaning of “relevant contingent contract” and “operative condition”

- (1) In the Part 5 one-way exchange effect provisions “relevant contingent contract” means a contract that meets the following two conditions.
- (2) The first condition is that company A, or a company connected with company A (“the relevant company”), is a party to the contract.
- (3) The second condition is that the contract includes a condition—
 - (a) on the meeting of which a right or liability under the contract is altered, and
 - (b) that operates (directly or indirectly) by reference to the exchange rate between the operating currency of the relevant company and another currency.
- (4) In this section “operating currency” has the same meaning as in section 328D.
- (5) In the Part 5 one-way exchange effect provisions, “operative condition” means a condition of the kind mentioned in subsection (3).

328H Other interpretative provisions

- (1) In this Act “the Part 5 one-way exchange effect provisions” means sections 328A to 328G and this section.
- (2) The following provisions of this section have effect for the purposes of the Part 5 one-way exchange effect provisions.
- (3) References to arrangements include any agreements, understandings, schemes, transactions or series of transactions (whether or not legally enforceable).
- (4) The circumstances to be taken into account in determining whether a loan relationship or relevant contract is “part of” any arrangements include (in particular)—
 - (a) the circumstances in which it was entered into, acquired or issued,
 - (b) the currency in which it is denominated, and
 - (c) its likely effect.
- (5) References to the currency in which a relevant contract is denominated are to the currency in which its underlying subject matter is denominated.
- (6) A currency (“currency A”) appreciates relative to another currency (“currency B”) over a period if—
 - (a) the value expressed in currency B of one unit of currency A at the end of the period, exceeds
 - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,and the percentage of the appreciation is the amount determined under subsection (7).
- (7) The percentage of the appreciation is—

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- (a) the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (6), expressed as a percentage of the amount mentioned in that paragraph (b), or
 - (b) if lower, 100%.
- (8) A currency (“currency A”) depreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, is less than
 - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,
- and the percentage of the depreciation is the difference, expressed as a percentage of the amount mentioned in paragraph (b).
- (9) References to a company connected with company A are to a company connected with company A for the relevant accounting period.
- (10) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (9).
- (11) The following provisions apply for the purposes of the Part 5 one-way exchange effect provisions—
- sections 577 and 578 (meaning of “relevant contract” etc),
 - section 580 (meaning of “option”),
 - section 583 (meaning of “underlying subject matter”),
 - section 584 (hybrid derivatives with embedded derivatives),
 - section 585 (loan relationships with embedded derivatives), and
 - section 586 (other contracts with embedded derivatives).
- (12) See section 328A for the meaning of the following expressions—
- “the arrangements”;
 - “company A”;
 - “the relevant accounting period”;
 - “the test day”.

Derivative contracts

- 4 Chapter 3 of Part 7 of CTA 2009 (derivative contracts: credits and debits to be brought into account) is amended as follows.
- 5 For the heading before section 606 (exchange gains and losses) substitute—

“Exchange gains and losses”.

- 6 (1) Section 606 is amended as follows
- (2) In subsection (3), for paragraph (a) (together with the “and” at the end) substitute—
- “(a) condition A or B is met, and”.
- (3) In subsection (4), for the words from “so much” to “currency as” substitute “an exchange gain or loss of a company so far as—
- (a) condition A is met, and
 - (b) it”.

(4) After that subsection insert—

“(4A) Condition A is that the exchange gain or loss arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency.

(4B) Condition B is that the exchange gain or loss arises as a result of the translation from one currency to another of the profit or loss of part of the company’s business.

(4C) Subsection (4D) applies where—

- (a) condition A is met, and
- (b) the amount that is recognised in respect of the exchange gain or loss as mentioned in subsection (3)(b) (“the recognised gain or loss”) is not calculated by reference to spot rates of exchange.

(4D) Where this subsection applies—

- (a) the recognised gain or loss is to be treated for the purposes of this Part as comprising two separate exchange gains or losses, namely—
 - (i) an exchange gain or loss calculated by reference to spot rates of exchange, and
 - (ii) a residual exchange gain or loss, and
- (b) subsections (3) and (4) do not have effect in relation to the residual exchange gain or loss.”

(5) After subsection (4D) (inserted by sub-paragraph (4) above) insert—

“(4E) Subsections (3) and (4) do not have effect to disapply subsection (1) in the case of an exchange gain arising in an accounting period of a company so far as—

- (a) the exchange gain arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency,
- (b) the derivative contract is part of arrangements that have a one-way exchange effect in relation to the company in the accounting period (see section 606A), and
- (c) the arrangements cause the company or any other company to gain a tax advantage (other than a negligible tax advantage).”

7 After that section insert—

“606A Arrangements that have a “one-way exchange effect”

(1) For the purposes of section 606 arrangements (“the arrangements”) have a “one-way exchange effect” in relation to a company (“company A”) in an accounting period of that company (“the relevant accounting period”) if the following two conditions are met.

(2) The first condition is that the arrangements include an option or a relevant contingent contract.

(3) The second condition is that, in relation to any day in the relevant accounting period (“the test day”)—

- (a) amount A is not equal to amount B, and

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- (b) the difference between amounts A and B is not the same as it would be were those amounts calculated disregarding the matching rules.
- (4) Amount A is—
 - (a) the sum of the relevant exchange losses of company A, and of each company connected with company A, that arise in accounting periods of those companies that end on the test day, less
 - (b) the sum of the relevant exchange gains of those companies that arise in such accounting periods.
- (5) Amount B is—
 - (a) the sum of the relevant exchange gains of company A, and of each company connected with company A, that would have arisen in accounting periods of those companies that end on the test day, less
 - (b) the sum of the relevant exchange losses of those companies that would have arisen in such accounting periods,

if exchange gains and losses of those companies in those accounting periods were calculated in accordance with section 606D (counterfactual currency movement assumptions).
- (6) For the purposes of subsections (4) and (5) an accounting period of company A, or of a company connected with company A, in which the test day falls and that does not end on that day is to be treated as if it did end on that day.
- (7) In this section “the matching rules” means—
 - (a) section 328(3) and (4), and
 - (b) section 606(3) and (4).

606B Meaning of “relevant exchange gain” and “relevant exchange loss”

- (1) For the purposes of section 606A an exchange gain or loss of a company is “relevant” if—
 - (a) it arises in relation to—
 - (i) an asset or liability representing a loan relationship to which the company is a party, or
 - (ii) a relevant contract to which the company is a party,
 - (b) the loan relationship or relevant contract is part of the arrangements, and
 - (c) a debit or credit in respect of the exchange gain or loss is required to be brought into account by the company for the purposes of corporation tax.
- (2) For the purposes of subsection (1)(c)—
 - (a) the arrangements are to be treated as not having a one-way exchange effect in relation to the company for the purposes of section 328 or 606 (whether or not they would have such an effect apart from this subsection), and
 - (b) sections 441 and 442 (loan relationships: unallowable purposes) and 690 to 692 (derivative contracts: unallowable purposes) are to be disregarded.

606C Meaning of “test day”

- (1) This section makes provision for the purposes of section 606A as to whether a day in an accounting period of company A is a “test day”.
- (2) In the case of arrangements that include one or more options, a day in the accounting period is a “test day” if it is—
 - (a) a day on which such an option is exercised,
 - (b) a day on which such an option that is not exercised in the accounting period was capable of being exercised,
 - (c) a day on which company A, or a company connected with company A, ceased to be a party to such an option,
 - (d) a day on which a terms of such an option are varied, or
 - (e) the last day of the accounting period.
- (3) In the case of arrangements that include one or more relevant contingent contracts, a day in the accounting period is a “test day” if it is—
 - (a) a day on which an operative condition of such a contract is met,
 - (b) a day on which company A, or a company connected with company A, ceased to be a party to such a contract,
 - (c) a day on which a terms of such a contract are varied, or
 - (d) the last day of the accounting period.

606D Counterfactual currency movement assumptions

- (1) This section makes provision for the purposes of section 606A(5) as to the calculation of exchange gains and losses of a company arising in an accounting period of that company.
- (2) Where the relevant foreign currency appreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead depreciates (over the same period and in relation to the same currency) by that percentage.
- (3) Where the relevant foreign currency depreciates over the accounting period, or any part of the accounting period, relative to the operating currency of company A by any percentage, the calculation must be made on the assumption that the relevant foreign currency instead appreciates (over the same period and in relation to the same currency) by that percentage.
- (4) For provision as to the treatment of certain options for the purposes of the calculation in cases in which subsection (2) or (3) applies, see section 606E.
- (5) Except as provided for in that section, the calculation must be made on the basis of transactions in fact entered into (and not on the basis of transactions that would have been entered into on the assumption specified in subsection (2) or (3)).
- (6) In this section “relevant foreign currency” means—

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- (a) the currency in which the loan relationships or relevant contracts in respect of which the exchange gains or losses arise are denominated, or
 - (b) where the exchange gains or losses arise in respect of loan relationships or relevant contracts denominated in more than one currency, any of them.
- (7) References in this section to the “operating currency” of a company, in relation to an accounting period, are (subject to subsection (8)) to the currency in which profits or losses of the company arising in that accounting period that fall to be computed in accordance with generally accepted accounting practice for corporation tax purposes are required to be computed by virtue of section 92(1), 92A(2), 92B(2)(a) or 92C(3)(a) of FA 1993 (foreign currency accounting).
- (8) In relation to a loan relationship or relevant contract to which a company is deemed to be a party under—
- (a) section 381(2) and (3) (loan relationships involving firms), or
 - (b) section 620(2) (relevant contracts involving firms),
- references in this section to the “operating currency” of the company, in relation to an accounting period, are to the currency that would be the operating currency of that firm in that accounting period if that firm were a company.

606E Counterfactual currency movement assumptions: treatment of options

- (1) This section applies in relation to the calculation for the purposes of section 606A(5) of exchange gains and losses of a company arising in an accounting period of that company where—
- (a) the calculation is made on the assumption specified in subsection (2) or (3) of section 606D (“the relevant assumption”), and
 - (b) an option is part of the arrangements.
- (2) Subsection (3) applies if the option is exercised on the test day.
- (3) The option is to be treated as not having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would not have been exercised on that day.
- (4) Subsection (5) applies if the option is not exercised on the test day but was exercisable on that day.
- (5) The option is to be treated as having been exercised on the test day if, on the relevant assumption, it is in all the circumstances more likely than not that it would have been exercised on that day.

606F Meaning of “option”

- (1) In the Part 7 one-way exchange effect provisions “option” is to be construed as if section 580(2) and (3) (meaning of option) were omitted.
- (2) For the purposes of the Part 7 one-way exchange effect provisions—
- (a) section 584 (hybrid derivatives with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with

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- generally accepted accounting practice, the company treats” there were substituted “it is possible to regard”,
- (b) section 585 (loan relationships with embedded derivatives) is to be construed as if in subsection (1) for the words “in accordance with generally accepted accounting practice a company treats” there were substituted “it is possible to regard”, and
 - (c) section 586 (other contracts with embedded derivatives) is to be construed as if in subsection (1)(b) for the words “in accordance with generally accepted accounting practice, treats” there were substituted “it is possible to regard”.

606G Meaning of “relevant contingent contract” and “operative condition”

- (1) In the Part 7 one-way exchange effect provisions “relevant contingent contract” means a contract that meets the following two conditions.
- (2) The first condition is that company A, or a company connected with company A (“the relevant company”), is a party to the contract.
- (3) The second condition is that the contract includes a condition—
 - (a) on the meeting of which a right or liability under the contract is altered, and
 - (b) that operates (directly or indirectly) by reference to the exchange rate between the operating currency of the relevant company and another currency.
- (4) In this section “operating currency” has the same meaning as in section 606D.
- (5) In the Part 7 one-way exchange effect provisions “operative condition” means a condition of the kind mentioned in subsection (3).

606H Other interpretative provisions

- (1) In this Act “the Part 7 one-way exchange effect provisions” means sections 606A to 606G and this section.
- (2) The following provisions of this section have effect for the purposes of the Part 7 one-way exchange effect provisions.
- (3) References to arrangements include any agreements, understandings, schemes, transactions or series of transactions (whether or not legally enforceable).
- (4) The circumstances to be taken into account in determining whether a loan relationship or relevant contract is “part of” any arrangements include (in particular)—
 - (a) the circumstances in which it was entered into, acquired or issued,
 - (b) the currency in which it is denominated, and
 - (c) its likely effect.
- (5) References to the currency in which a relevant contract is denominated are to the currency in which its underlying subject matter is denominated.

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

- (6) A currency (“currency A”) appreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, exceeds
 - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,
- and the percentage of the appreciation is the amount determined under subsection (7).
- (7) The percentage of the appreciation is—
- (a) the difference between the amounts mentioned in paragraphs (a) and (b) of subsection (6), expressed as a percentage of the amount mentioned in that paragraph (b), or
 - (b) if lower, 100%.
- (8) A currency (“currency A”) depreciates relative to another currency (“currency B”) over a period if—
- (a) the value expressed in currency B of one unit of currency A at the end of the period, is less than
 - (b) the value expressed in currency B of one unit of currency A at the beginning of the period,
- and the percentage of the depreciation is the difference, expressed as a percentage of the amount mentioned in paragraph (b).
- (9) References in this section to a company connected with company A are to a company connected with company A for the relevant accounting period.
- (10) Section 466 (companies connected for an accounting period) applies for the purposes of subsection (9).
- (11) “Tax advantage” has the meaning given by section 840ZA of ICTA.
- (12) See section 606A for the meaning of the following expressions—
- “the arrangements”;
 - “company A”;
 - “the relevant accounting period”;
 - “the test day”.

8 Immediately before section 607 (pre-contract or abortive expenses) insert—

“Miscellaneous”.

Interpretation

9 In Schedule 4 to CTA 2009 (index of defined expressions), insert at the appropriate places—

“the Part 5 one-way exchange effect provisions	section 328H(1)”;
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“the Part 7 one-way exchange effect section 606H(1)”
provisions

Consequential revocation

- 10 The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2006 ([S.I. 2006/843](#)) are revoked.

Commencement

- 11 (1) The amendments made by this Schedule have effect—
- (a) in relation to exchange gains and losses arising in accounting periods beginning on or after 22 April 2009, and
 - (b) subject to the following provisions of this paragraph, in relation to exchange gains and losses arising in straddling accounting periods.
- (2) In this paragraph “straddling accounting period” means an accounting period that—
- (a) begins before 22 April 2009, and
 - (b) ends on or after that date.
- (3) An exchange gain or loss that arises in a straddling accounting period in relation to—
- (a) an asset or liability representing a loan relationship, or
 - (b) a derivative contract,
- is to be treated for the purposes of this paragraph as if it were made up of two amounts.
- (4) Those two amounts are the exchange gains or losses that would arise in relation to the loan relationship or derivative contract in—
- (a) that part of the period that falls before 22 April 2009, and
 - (b) that part of the period that falls on or after that date,
- if those parts were separate accounting periods.
- (5) The amendments made by this Schedule have effect, in relation to an exchange gain or loss of the kind mentioned in sub-paragraph (3), as if the gain or loss were the amount determined in relation to it under sub-paragraph (4)(b).