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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, SCHEDULE 11. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 11

Section 36

#### RELIEFS AND REDUCTIONS FOR FOREIGN TAX

##### *Effect of foreign tax becoming payable*

- 1 (1) Paragraph 3 of Schedule 28AB to ICTA (schemes about effect of paying foreign tax) is amended as follows.
  - (2) In sub-paragraph (2)—
    - (a) in paragraph (a), after “paid” insert “ or payable ”, and
    - (b) in paragraph (b), for “of the payment of that amount of foreign tax on the foreign tax total” substitute “ on the foreign tax total of that amount being so paid or payable ”.
  - (3) In sub-paragraph (3)(b), for “the payment by the claimant of that amount of foreign tax” substitute “ that amount of foreign tax being paid or payable by the claimant ”.
- 2 (1) Section 85 of TIOPA 2010 (schemes about effect of paying foreign tax) is amended as follows.
  - (2) In subsection (2)—
    - (a) for paragraph (a) substitute—

“(a) an amount of foreign tax (“the FT amount”) is paid or payable by C, and”, and
    - (b) in paragraph (b), for “of the payment of the FT amount on the foreign-tax total” substitute “ on the foreign-tax total of the FT amount being so paid or payable ”.
  - (3) In subsection (3), in paragraph (b) of the definition of “the foreign-tax total”, for “the payment by C of the FT amount” substitute “ the FT amount being paid or payable by C ”.
- 3 (1) The amendments made by paragraphs 1 and 2 have effect in relation to amounts of foreign tax payable on or after 21 October 2009.
  - (2) But see paragraph 5 for amounts of foreign tax payable on or after 1 April 2010 (as regards corporation tax) or 6 April 2010 (as regards income tax or capital gains tax).

##### *Schemes about deemed foreign tax*

- 4 (1) In TIOPA 2010, after section 85 insert—

##### **“85A Section 83(2) and (4): schemes involving deemed foreign tax**

- (1) This section applies to a scheme or arrangement if in relation to a claimant—

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- (a) an amount (“amount X”) is treated by virtue of a provision of the Tax Acts as if it were an amount of foreign tax paid or payable by the claimant in respect of a source of income, and
  - (b) condition A or B is met.
- (2) Condition A is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement, no real foreign tax would be paid or payable by a participant.
- (3) Condition B is met if, when the claimant entered into the scheme or arrangement, it could reasonably be expected that, under the scheme or arrangement—
- (a) an amount of real foreign tax (“the RFT amount”) would be paid or payable by a participant, but
  - (b) the effect on the foreign-tax total of the RFT amount being so paid or payable would be to increase the foreign-tax total by less than the amount allowable to the claimant as a credit in respect of amount X.
- (4) In this section—
- “claimant” means a person who for a chargeable period has claimed, or is in a position to claim, for any credit that under the arrangements is to be allowed for foreign tax;
  - “the foreign-tax total” has the meaning given by section 85(3), except that the reference to “the FT amount being paid or payable by C” must be read as a reference to “the RFT amount being paid or payable by any of them”;
  - “income” includes a chargeable gain;
  - “participant” means a person who is party to, or concerned in, the scheme or arrangement;
  - “real foreign tax” means—
    - (a) in a case involving section 10 (accrued income profits), the foreign tax chargeable in respect of the interest on the securities, as mentioned in subsection (1)(c) of that section,
    - (b) in a case involving section 792 or 794 of CTA 2010 (manufactured overseas dividends), the foreign tax chargeable in respect of the overseas dividend of which the manufactured overseas dividend is representative, as mentioned in section 790 of that Act, and
    - (c) in any other case, the foreign tax chargeable in respect of the source of income of which the source mentioned in subsection (1)(a) is representative.”
- (2) The amendment made by this paragraph has effect in relation to amounts treated as if they were amounts of foreign tax paid or payable on or after 21 October 2009.
- (3) A corresponding amendment, having effect in relation to such amounts, is to be treated as having been made in Schedule 28AB to ICTA.

*Foreign tax payable by other participants*

- 5 (1) In section 85 of TIOPA 2010 (schemes about effect of paying foreign tax) as amended by paragraph 2—

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- (a) in subsection (1), for “for foreign tax” substitute “ in respect of the payment of an amount of foreign tax (“the FT amount”) ”,
- (b) for subsection (2) substitute—

“(2) The condition is that, when C entered into the scheme or arrangement, it could reasonably be expected that the effect on the foreign-tax total of the FT amount being paid or payable would be to increase that total by less than amount X.”, and

- (c) in subsection (3)—
  - (i) for “subsection (2)(b)” substitute “ subsection (2) ”, and
  - (ii) in paragraph (b) of the definition of “the foreign-tax total”, omit “by C”.

- (2) In section 85A of TIOPA 2010 (schemes involving deemed foreign tax) as inserted by paragraph 4—

- (a) in subsection (1)(a), omit “by the claimant”, and
- (b) in subsection (4), in the definition of “the foreign-tax total”, omit “by C”.

- (3) The amendments made by this paragraph have effect in relation to amounts of foreign tax, or amounts treated as if they were amounts of foreign tax, payable—

- (a) as regards corporation tax, on or after 1 April 2010, and
- (b) as regards income tax or capital gains tax, on or after 6 April 2010.

*Claims etc made before scheme or arrangement made*

- 6 (1) In section 86 of TIOPA 2010 (schemes about claims or elections etc)—
  - (a) in subsection (1), omit “under the scheme or arrangement”, and
  - (b) after subsection (3) insert—

“(3A) Reference in subsection (1) to a step that is taken or not taken by a participant includes one that was taken or not taken by a participant before the scheme or arrangement was made.

(3B) The reason for taking or not taking a step does not matter so long as it has the effect mentioned in subsection (1).”

- (2) The amendments made by this paragraph have effect in relation to amounts of foreign tax payable—

- (a) as regards corporation tax, on or after 1 April 2010, and
- (b) as regards income tax or capital gains tax, on or after 6 April 2010.

*Limit on reduction for foreign tax*

- 7 (1) In section 112 of TIOPA 2010 (deduction from income for foreign tax), after subsection (2) insert—

“(2A) But if X is less than Y, an amount equal to the difference between X and Y must be subtracted from the amount by which any income of a person (“the relevant income”) is reduced under subsection (1)(a).

- (2B) In subsection (2A)—

X is the amount of the relevant income that the person would (disregarding this section) be required to bring into account for income

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tax or corporation tax purposes, less any deduction that the person would be allowed to make for the amount paid in respect of non-UK tax, and

Y is the amount of the relevant income (that is to say, the amount on which the amount in respect of non-UK tax is paid).”

- (2) The amendment made by this paragraph has effect in relation to amounts in respect of non-UK tax that are paid—
- (a) as regards corporation tax, on or after 1 April 2010, and
  - (b) as regards income tax, on or after 6 April 2010.

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