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SCHEDULES

SCHEDULE 9

TRANSITIONALS AND SAVINGS ETC

PART 3

DOUBLE TAXATION RELIEF

Conversion of references to the profits tax in old arrangements

- 11 (1) Sub-paragraph (2) applies to any arrangements—
- (a) made in relation to the profits tax (which was abolished by section 46(3) of FA 1965), and
 - (b) specified in an Order in Council made—
 - (i) under section 347 of the Income Tax Act 1952, or
 - (ii) under any earlier enactment corresponding to that section.
- (2) The arrangements have effect—
- (a) in relation to corporation tax as they are expressed to have effect in relation to the profits tax (and not as they had effect in relation to income tax), and
 - (b) in relation to income to which the charge to corporation tax on income applies, and in relation to gains to which the charge to corporation tax on chargeable gains applies, as they are expressed to have effect in relation to profits chargeable to the profits tax,
- but with the substitution of accounting periods for chargeable accounting periods.
- (3) Sub-paragraph (2) applies subject to any contrary provision contained in arrangements—
- (a) made after the passing of FA 1965 (which was passed on 5 August 1965), and
 - (b) specified in an Order in Council made—
 - (i) under section 347 of the Income Tax Act 1952, or
 - (ii) under any later enactment corresponding to that section.
- (4) Sub-paragraph (2) applies despite section 18(5) of this Act.

Effect in relation to capital gains tax of arrangements given effect before introduction of that tax

- 12 Any arrangements specified in an Order in Council made under section 347 of the Income Tax Act 1952 before 5 August 1965, so far as they provide (in whatever terms) for relief from tax chargeable in the United Kingdom on capital gains, have effect in relation to capital gains tax.

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Double taxation arrangements to which section 11(3) applies

- 13 Section 11(3) does not have effect in relation to arrangements made before 21 March 2000.

Unilateral relief for underlying tax on dividends

- 14 (1) Condition C in section 15 (credit for underlying tax on dividend paid to sub-10% associate) is not met if the reduction below the 10% limit took place before 1 April 1972.
- (2) Condition C in section 16 (credit for underlying tax on dividend paid by exchanged associate) is not met if the exchange took place before 1 April 1972.

Time limits for claims for relief

- 15 (1) If article 10 of the 2009 Order applies—
- (a) section 19(2)(a) (claims for relief under section 18(2) in relation to income tax or capital gains to be made by fourth anniversary of end of tax year) has effect at times before 1 April 2012 as if for “fourth anniversary of the end of” there were substituted “fifth anniversary of the 31 January next following”,
 - (b) section 19(3)(a) (claims for relief under section 18(2) in relation to corporation tax to be made within 4 years) has effect at times before 1 April 2012 as if for “4” there were substituted “6”,
 - (c) section 77(3)(a) (claims for relief under section 73(1) to be made within 4 years) has effect at times before 1 April 2012 as if for “four” there were substituted “6”, and
 - (d) section 43D(5) of TMA 1970 (which is inserted by Part 1 of Schedule 8 and is about claims for relief under sections 2 to 6 in relation to petroleum revenue tax) has effect at times before 1 April 2012 as if for “4 years after the end of” there were substituted “5 years after the 31 January next following”.
- (2) In sub-paragraph (1) “the 2009 Order” means the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (S.I. 2009/403).

Taking account of underlying tax

- 16 In relation to distributions paid before 1 July 2009, the amount of any income or gain is not to be increased under section 31(2)(b) by so much of any underlying tax within section 31(3)(a) as represents relievably underlying tax, within the meaning of sections 806A to 806J of ICTA, arising in respect of another dividend and treated as underlying tax under those sections.

Reduction in credit: payment by reference to foreign tax

- 17 Section 34 does not have effect in relation to payments made before 22 April 2009.

Credit against corporation tax on trade income: anti-avoidance

- 18 Section 45(2) has effect in relation to a credit for foreign tax only if the credit relates to—
- (a) a payment of foreign tax on or after 22 April 2009, or

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- (b) income received on or after that date in respect of which foreign tax has been deducted at source.

Credit against corporation tax on trade income: banks

- 19 Section 49 has effect in relation to a credit for foreign tax only if the credit relates to—
- (a) a payment of foreign tax on or after 22 April 2009, or
- (b) income received on or after that date in respect of which foreign tax has been deducted at source.

Meaning of “relevant profits” in section 58

- 20 In relation to dividends paid before 1 July 2009, section 59 has effect with the following modifications—
- (a) the omission of subsections (2) and (3),
- (b) in subsection (4), the omission of “is not within subsection (3) but”, and
- (c) in subsection (5), the omission of “is not within subsection (3) and”.

Conditions for relief for underlying tax paid by company lower in dividend-paying chain

- 21 Section 65(3)(a) applies with the omission of sub-paragraph (ii) if the dividend paid by the second company to the first company is paid before 22 April 2009.

Application of sections 109 and 110 in relation to pre-1 October 2007 cases

- 22 (1) Section 109 does not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section of that Act came into force before 1 October 2007.
- (2) Section 110 does not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale before 1 October 2007.
- (3) This Act has effect with the modifications set out in sub-paragraphs (4) and (5), but those modifications—
- (a) do not apply in the case of a debtor repo, within the meaning given by section 548 of CTA 2009, if the arrangement mentioned in that section comes into force on or after 1 October 2007, and
- (b) do not apply in the case of a stock lending arrangement, within the meaning given by section 263B of TCGA 1992, under which the lender transfers securities to the borrower otherwise than by way of sale on or after 1 October 2007.
- (4) In section 108(3) for “section 109 or 110” substitute “ section 109A ”.
- (5) For sections 109 and 110 substitute—

“109A Repo or 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—

Status: Point in time view as at 01/04/2010.

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- (a) at the time when the interest accrues, the company has ceased to be a party to the relationship as a result of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to the relationship, and
 - (b) that time is in the period for which those arrangements have effect.
- (2) In this section “repo or stock-lending arrangements”, in relation to a loan relationship, means (subject to subsection (3)) any arrangements consisting in or involving an agreement or series of agreements under which provision is made—
- (a) for the transfer from one person (“A”) to another of any rights under the relationship, and
 - (b) for A subsequently to be or become entitled, or required—
 - (i) to have the same or equivalent rights transferred to A, or
 - (ii) to have rights in respect of benefits accruing in respect of the relationship on redemption.
- (3) Arrangements are not repo or stock-lending arrangements for the purposes of this section if they are excluded from section 730A of ICTA by section 730A(8) of ICTA.
- (4) For the purposes of subsection (2) rights under a loan relationship are equivalent to rights under another loan relationship if they entitle the holder of an asset representing the relationship—
- (a) to the same rights against the same persons as to capital, interest and dividends, and
 - (b) to the same remedies for the enforcement of those rights,
- despite any difference in the total nominal amounts of the assets, in the form in which they are held or in the manner in which they can be transferred.
- (5) In this section—
- (a) “the initial transfer”, in relation to any repo or stock-lending arrangements, is a reference to the transfer mentioned in subsection (2)(a), and
 - (b) a reference to the period for which repo or stock-lending arrangements have effect is a reference to the period from the making of the initial transfer until whichever is the earlier of the following—
 - (i) the discharge of the obligations arising by virtue of the entitlement or requirement mentioned in subsection (2)(b), or
 - (ii) the time when it becomes apparent that the discharge of those obligations will not take place.”

Income increased by amounts paid by reference to foreign tax for which deduction allowed

23 Section 112(3) does not have effect in relation to payments made before 22 April 2009.

Status: Point in time view as at 01/04/2010.

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Offshore fund treated after 1 December 2009 as distributing fund under repealed Chapter 5 of Part 17 of ICTA

- 24 In paragraph 5(4)(b) of Schedule 27 to ICTA (offshore funds: distributing funds) as it has effect as a result of paragraph 3 of Schedule 1 to the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), the reference to section 811 of ICTA is to be treated as a reference to section 112 of this Act.

Limited effect of amendments of sections 806A to 806J of ICTA

- 25 The amendments in sections 806A to 806J of ICTA that are made by Part 1 of Schedule 8 have effect only in relation to distributions paid before 1 July 2009.

Interpretative rules saved for the purposes of applying sections 806A to 806K of ICTA to distributions paid before 1 July 2009

- 26 (1) Despite their repeal by this Act, the saved rules have effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—
- (a) before 1st July 2009, but
 - (b) in accounting periods ending on or after 1st April 2010.
- (2) In this paragraph “the saved rules” means the following provisions of ICTA—
- (a) section 788(4),
 - (b) in section 788(5), the first two sentences,
 - (c) section 790(12), and
 - (d) section 792.
- (3) The saved rules, so far as having effect as mentioned in sub-paragraph (1), have effect with the following modifications.
- (4) Section 788(4) of ICTA has effect as if for “by virtue of this section” there were substituted “ under section 2(1) of TIOPA 2010 ”.
- (5) In section 788(5) of ICTA the first sentence has effect as if for the words before “any amount of tax” there were substituted “ For the purposes of Chapter 2 of this Part in its application to relief under sections 2 and 6 of TIOPA 2010, but subject to section 31(4) of TIOPA 2010, ”.
- (6) Section 790(12) of ICTA has effect as if for the words from the beginning to “unilateral relief,” there were substituted “ In Chapter 2 of this Part in its application to relief under section 18(1)(b) and (2) of TIOPA 2010, ”.
- (7) Section 792(1) of ICTA has effect as if—
- (a) for “by virtue of section 788” (in both places) there were substituted “ under section 2(1) of TIOPA 2010 ”,
 - (b) for “Chapter 7 of Part 3 of the Finance Act 2004” there were substituted “ Part 3 of TIOPA 2010 ”, and
 - (c) for “section 790” there were substituted “ section 18(1)(b) and (2) of TIOPA 2010 ”.
- (8) Section 792 of ICTA has effect as if after subsection (3) there were (by way of relocation of provisions of section 790(3) of ICTA) inserted—

Status: Point in time view as at 01/04/2010.

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“(4) Any expression in this Chapter which imports a reference to relief under arrangements for the time being having effect under section 2(1) of TIOPA 2010 shall be deemed to import also a reference to unilateral relief.”

Repealed references to Part 18 of ICTA saved for purposes of sections 806A to 806K of ICTA

- 27 (1) Sub-paragraph (2) has effect for the purposes of applying sections 806A to 806K of ICTA in relation to distributions paid—
- (a) before 1st July 2009, but
 - (b) in accounting periods ending on or after 1st April 2010.
- (2) The reference to Part 2 of this Act contained in each of the provisions mentioned in sub-paragraph (3) is to be treated as including a reference to Part 18 of ICTA.
- (3) The provisions are—
- (a) paragraph 4(2) of Schedule 26 to ICTA (controlled foreign companies: dividends), and
 - (b) sections 140H(3), 140I(3) and 140J(3) of TCGA 1992 (foreign tax not charged as a result of Mergers Directive to be treated as charged).

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