
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 20. (See end of Document for details)

SCHEDULES

SCHEDULE 20

Section 42

TAX MISMATCH SCHEMES

- 1 CTA 2010 is amended in accordance with paragraphs 2 to 4.
- 2 In section 1(4) (overview of Act), after paragraph (j) insert—
“(ja) tax mismatch schemes (see Part 21BA),”.
- 3 After Part 21B insert—

“PART 21BA

TAX MISMATCH SCHEMES

Losses and profits from tax mismatch scheme to be disregarded

938(1) This section applies to a company that is (at any time) a party to a tax mismatch scheme.

- (2) No scheme loss or profit made by the company in any accounting period in relation to the scheme is to be brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).
- (3) An amount that would, apart from this section, be brought into account for the purposes of Part 5 or 7 of that Act as respects any matter—
 - (a) is treated, for the purposes of section 464(1) or (as the case may be) 699(1) of that Act (priority of Part 5 or 7 for corporation tax purposes), as if it were so brought into account, and
 - (b) accordingly, may not be brought into account for any other corporation tax purposes as respects that matter.

Meaning of “tax mismatch scheme”

938(1) A scheme is a tax mismatch scheme if condition A or B is met.

- (2) Condition A is that, at the time the scheme is entered into, there is no practical likelihood that the scheme will fail to secure a relevant tax advantage of £2 million or more.
- (3) The Treasury may by order substitute a higher amount for the amount for the time being specified in subsection (2).
- (4) Any such substitution is to have effect in relation to schemes entered into on or after the day on which the order comes into force.
- (5) Condition B is that—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 20. (See end of Document for details)

- (a) the purpose, or one of the main purposes, of the company in entering into the scheme is to obtain the chance of securing a relevant tax advantage (of any amount), and
 - (b) at the time the scheme is entered into—
 - (i) there is no chance that the scheme will secure a relevant tax disadvantage, or
 - (ii) there is such a chance, but the expected value of the scheme is nevertheless a positive amount.
- (6) If, at the time the company enters into the scheme, there are chances that the scheme would, if carried out, secure different relevant tax advantages or disadvantages in different circumstances, the amounts and probabilities of each must be taken into account in determining the expected value of the scheme.
- (7) In determining whether condition A or B is met, it is to be assumed that the parties to the scheme carry it out.
- (8) Where, at the time the scheme is entered into, the length of the scheme period is uncertain, condition A or B is met if it would be met on any reasonable assumption as to the length of the scheme period.
- (9) In determining whether condition A or B is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

Meaning of “scheme loss” and “scheme profit”

- 938Q) A loss or profit made by a company in an accounting period is a “scheme loss” or “scheme profit” in relation to a tax mismatch scheme if the loss or profit—
- (a) arises from a transaction, or series of transactions, that forms part of the scheme,
 - (b) is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009, and
 - (c) meets the first or second asymmetry condition.
- (2) The first asymmetry condition is that the loss or profit affects the amount of any relevant tax advantage secured by the scheme.
- (3) Where, at the end of the accounting period—
- (a) it is not certain whether the scheme will secure a relevant tax advantage, or
 - (b) it is not certain what the amount of the relevant tax advantage secured by the scheme will be,
- a loss or profit is to be treated as meeting the first asymmetry condition if, at that time, there is a chance that the scheme will secure a relevant tax advantage and that the loss or profit will affect its amount.
- (4) Where—
- (a) a loss or profit meets the conditions in subsection (1)(a) and (b), and
 - (b) a part, but not the whole, of the loss or profit meets the first asymmetry condition,
- only that part of the loss or profit is a “scheme loss” or “scheme profit”.

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- (5) The second asymmetry condition is that the loss or profit—
 - (a) does not meet the first asymmetry condition, but
 - (b) arises from a transaction, or series of transactions, that might (if events had turned out differently) have given rise to a loss or profit that would have done so.
- (6) References in this section to a loss or profit include a loss or profit arising in respect of interest or expenses.
- (7) In determining whether the condition in subsection (1)(b) or the first or second asymmetry condition is met, section 938O (scheme profits and losses to be left out of account) is to be disregarded.

Meaning of “relevant tax advantage” etc and “the scheme period”

- 938R) In this Part “relevant tax advantage”, in relation to a scheme, means an economic profit that—
- (a) is made by the company over the scheme period,
 - (b) meets the condition in subsection (3), and
 - (c) is not negligible.
- (2) In this Part “relevant tax disadvantage”, in relation to a scheme, means an economic loss that—
- (a) is made by the company over the scheme period,
 - (b) meets the condition in subsection (3), and
 - (c) is not negligible.
- (3) The condition is that the economic profit or loss arises as a result of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits for the purposes of Part 5 or 7 of CTA 2009.
- (4) A reference in this section to asymmetries includes, in particular—
- (a) asymmetries relating to quantification, and
 - (b) asymmetries relating to timing.
- (5) In this section—
- (a) a reference to an economic profit includes an increase in an economic profit and a decrease in an economic loss, and
 - (b) a reference to an economic loss includes an increase in an economic loss and a decrease in an economic profit.
- (6) In this Part “the scheme period”, in relation to a scheme, means the period during which the scheme has effect.

Meaning of references to economic profits and losses

- 938S) An economic profit or loss is to be computed for the purposes of this Part taking into account, in particular—
- (a) profits and losses made as a result of the operation of the Corporation Tax Acts, and
 - (b) any adjustments required to reflect the time value of money.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 20. (See end of Document for details)

- (2) In determining for the purposes of this Part the amount of an economic profit or loss made by the company over the scheme period, profits and losses made by the company are to be taken into account only to the extent that they are attributable to times at which the company is a party to the scheme.

Tax capacity assumption

938(I) This section applies for the purpose of determining whether a scheme will, or might, secure a relevant tax advantage.

- (2) The economic profits and losses made by the company over the scheme period must be calculated on the assumption that the company—
- (a) obtains the full tax benefit of any loss made by the company in relation to a loan relationship or a derivative contract during the period, and
 - (b) incurs the full tax cost of any profit made by the company in relation to a loan relationship or a derivative contract during the period.
- (3) The “full tax benefit” of a loss is the reduction in the liability of the company to corporation tax that would result if—
- (a) the loss were brought into account as a debit or as a reduction in a credit for the purposes of Part 5 or 7 of CTA 2009, and
 - (b) the company's profits chargeable to corporation tax, disregarding the loss, were equal to the debit (or the reduction in the credit) determined by reference to the loss.
- (4) The “full tax cost” of a profit is the increase in the liability of the company to corporation tax that would result if—
- (a) the profit were brought into account as a credit or as a reduction in a debit for the purposes of Part 5 or 7 of CTA 2009, and
 - (b) the company's profits chargeable to corporation tax, disregarding the profit, were nil.

Meaning of “scheme”

938U In this Part “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

Priority

938V For the purposes of this Part the following provisions are to be treated as of no effect—

- (a) section 441 of CTA 2009 (loan relationships for unallowable purposes);
- (b) section 690 of that Act (derivative contracts for unallowable purposes);
- (c) Part 6 of TIOPA 2010 (tax arbitrage);
- (d) Part 7 of that Act (tax treatment of financing costs and income).”

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 20. (See end of Document for details)

“economic loss (in Part 21BA)	section 938S”
“economic profit (in Part 21BA)	section 938S”
“relevant tax advantage (in Part 21BA)	section 938R”
“relevant tax disadvantage (in Part 21BA)	section 938R”
“scheme (in Part 21BA)	section 938U”
“scheme loss (in Part 21BA)	section 938Q”
“the scheme period (in Part 21BA)	section 938R”
“scheme profit (in Part 21BA)	section 938Q”.
““a tax mismatch scheme (in Part 21BA)	section 938P”.

- 5 In section 231(8) of TIOPA 2010 (tax arbitrage: overview), for the words from “section” to the end substitute “ sections 938N and 938V of CTA 2010 (this Part treated as of no effect for the purposes of Parts 21B and 21BA of CTA 2010 (group mismatch and tax mismatch schemes)). ”
- 6 (1) The amendments made by this Schedule have effect in relation to schemes entered into at any time (including any time before the commencement date).
- (2) But section 938O in Part 21BA of CTA 2010 (as inserted by paragraph 3 of this Schedule) does not apply to—
- (a) scheme losses or profits that relate to a time before the commencement date, or
 - (b) scheme profits that relate to a time on or after that date but are made in relation to a scheme entered into before that date.
- (3) In this paragraph “the commencement date” means 5 December 2012.

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