

## SCHEDULE 1

Section {}

## RISK TRANSFER SCHEMES [{}]

*Disallowance of certain losses arising in relation to risk transfer schemes*

- 1 (1) Sub-paragraph (2) applies where—
  - (a) a company is a party to a risk transfer scheme at any time in an accounting period, and
  - (b) the company makes a scheme loss in the period.
- (2) The scheme loss may be brought into account in determining a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts) only to the extent that condition A or B is met.
- (3) Condition A is that the scheme loss is, or is part of, a pre-tax economic loss made in the period by the relevant body.
- (4) Condition B is that the scheme loss is matched by a scheme profit that is—
  - (a) made in the period by any member of the relevant body, and
  - (b) brought into account by the member in determining a debit or credit for the purposes of Part 5 or 7 of CTA 2009.
- (5) For the purposes of this Schedule, a loss or profit of a company that is a party to a risk transfer scheme is a “scheme loss” or a “scheme profit” if—
  - (a) it is from a loan relationship, or a derivative contract, that is part of the scheme, and
  - (b) it arises as a result of fluctuations in a relevant rate, index or value.

*Paragraph 1: supplementary*

- 2 (1) This paragraph applies for the purposes of paragraph 1.
- (2) A scheme loss is “matched” by a scheme profit if the profit arises as a result of the same fluctuations in a relevant rate, index or value as the loss.
- (3) Any question as to the extent to which a scheme loss made by a company in an accounting period is part of a pre-tax economic loss made in the period by the relevant body is, in a case in which one or more other scheme losses are made in the period by members of the relevant body, to be determined on a just and reasonable basis.
- (4) A reference to a profit or loss from a loan relationship or a derivative contract includes—
  - (a) a profit or loss from a related transaction, and
  - (b) a profit or loss of a capital nature.
- (5) In sub-paragraph (4) “related transaction” has the meaning given by—
  - (a) section 304 of CTA 2009 (in relation to a loan relationship), or
  - (b) section 596 of CTA 2009 (in relation to a derivative contract).

*Meaning of “risk transfer scheme”*

- 3 (1) For the purposes of this Schedule, a scheme to which a company is a party at any time in an accounting period (“the period”) is a “risk transfer scheme” if—

- (a) the purpose, or one of the main purposes, of any member of the relevant body on entering into the scheme is to obtain a financial advantage (such as increasing the return on an investment or reducing the costs of borrowing) for the relevant body in the period, and
  - (b) conditions A to C are met.
- (2) Condition A is that it is reasonable to assume that, in the absence of the scheme (and of any other risk transfer scheme), the relevant body could have obtained the financial advantage mentioned in sub-paragraph (1)(a) only by becoming subject to (or incurring the cost of avoiding) a relevant risk.
- (3) For the purposes of this paragraph “relevant risk” means a risk that the relevant body would make an economic loss in the period as a result of fluctuations in a relevant rate, index or value.
- (4) Condition B is that, as a result of the scheme, the relevant body –
- (a) is not subject to the relevant risk, or
  - (b) is subject only to a negligible proportion of that risk.
- (5) Condition C is that, disregarding the effect of the provisions of the Corporation Tax Acts, condition B would not be met.
- (6) In determining for the purposes of this paragraph whether the relevant body obtains a “financial advantage” from a risk transfer scheme, the effect of the scheme on each member of the relevant body must be taken into account.

#### *Tax capacity assumption*

- 4 (1) In determining whether condition B in paragraph 3 is met, the following assumption must be made.
- (2) The assumption is that where –
- (a) any member of the relevant body makes a scheme loss in an accounting period, and
  - (b) an amount equivalent to the loss would (disregarding the effect of this Schedule and of any provision about tax avoidance) have been deductible in calculating profits chargeable to corporation tax for that period if the member had made sufficient profits,
- the relevant body makes an economic profit equal to the reduction in the corporation tax liability of that member that would have resulted from such a deduction.

#### *Meaning of “the relevant body”*

- 5 (1) In this Schedule “the relevant body”, in relation to a scheme to which a company (“company A”) is a party during an accounting period, means –
- (a) company A, and
  - (b) any other company that at any time in the period –
    - (i) is a party to the scheme, and
    - (ii) is in the same group as company A.
- (2) For the purposes of this paragraph a company (“company B”) is in the same group as company A at a time (“the relevant time”) during an accounting period of company A (“the accounting period”) if any of the following five conditions is met.

- (3) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.
- (4) The second condition is that there is a connection between company A and company B for the accounting period.
- (5) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
- (6) The fourth condition is that –
  - (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
  - (b) at the relevant time the third company has a major interest in company B.
- (7) The fifth condition is that –
  - (a) there is a connection between company A and a third company for the accounting period, and
  - (b) at the relevant time the third company has a major interest in company B.
- (8) In this paragraph the financial results of any two companies for any period meet “the consolidation condition” if –
  - (a) they are required to be comprised in group accounts prepared under section 399 of the Companies Act 2006 (duty of certain parent companies to prepare group accounts), or
  - (b) they would be required to be comprised in such accounts but for the application of an exemption mentioned in subsection (3) of that section.

*Connection between persons, and meaning of “major interest”, for the purposes of paragraph 5*

- 6 (1) Sections 466 to 471 of CTA 2009 (companies connected for accounting period) apply for the purposes of construing references in paragraph 5 to a connection between a company and another company for an accounting period.
- (2) Sections 473 and 474 of CTA 2009 (meaning of “major interest”) apply for the purposes of construing references in paragraph 5 to a company having a major interest in another company.

*Interpretation of references to losses and profits*

- 7 (1) A reference in this Schedule to an “economic” loss or profit made by any person in any period is to a loss or profit made by that person in that period, computed taking into account unrealised (as well as realised) losses and profits.
- (2) For the purposes of this Schedule –
  - (a) an economic loss is made “by the relevant body” if it is made by the members of the relevant body considered together, and
  - (b) in determining the amount of such a loss made in any period, the economic losses and profits of each member of the relevant body

must be computed over that period (whether or not that period is an accounting period of the member).

- (3) A reference in this Schedule to a “pre-tax” economic loss is a reference to an economic loss determined disregarding any loss or gain made as a result of the operation of any provision of the Corporation Tax Acts.

#### *Foreign currency accounting*

- 8 (1) In the application of paragraph 1 in relation to a scheme loss made in an accounting period of a company as a result of fluctuations in a rate of exchange between two currencies, all losses and profits are to be computed in the operating currency of that company in that accounting period.
- (2) Section 92E(5) of FA 1993 (meaning of references to the operating currency of a company) applies for the purposes of this paragraph.

#### *Other interpretative provisions*

- 9 (1) This paragraph applies for the purposes of this Schedule.
- (2) References to “a relevant rate, index or value” are to –
- (a) the rate of exchange between any two currencies,
  - (b) the retail price index (or any similar general index of prices) or any other index, or
  - (c) any price or other value.
- (3) “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.
- (4) “Derivative contract” has the same meaning as in Part 7 of CTA 2009 (derivative contracts).

#### *Commencement*

- 10 (1) This Schedule has effect in relation to accounting periods that begin on or after [budget day 2010] (“the commencement date”).
- (2) Where a company has an accounting period (“the straddling accounting period”) that –
- (a) begins before the commencement date, and
  - (b) ends on or after that date,
- the straddling accounting period is to be treated as split.
- (3) Where this paragraph provides that the straddling accounting period is to be treated as “split”, that part of the straddling accounting period that falls before the commencement date and that part of the straddling accounting period that falls on or after that date are to be treated for the purposes of this Schedule as separate accounting periods.