

SCHEDULE 1

Section {j0545g (debt cap)}

TAX TREATMENT OF INTRA-GROUP FINANCING COSTS AND INCOME [J0545SB (DEBT CAP)]

PART 1

INTRODUCTION

Groups of entities to which Schedule applies

- 1 This Schedule applies to any group of entities (“the worldwide group”) that—
 - (a) is large, and
 - (b) contains one or more relevant group companies.

Overview

- 2 (1) Part 2 provides for the calculation of an amount (“the tested amount”) in respect of a period of account of the worldwide group.
 - (2) The tested amount derives, in particular, from net intra-group financing costs of relevant group companies that would, apart from this Schedule, result in deductions for the purposes of corporation tax in relevant accounting periods of those companies.
 - (3) Part 3 provides for certain amounts that relate to financial services, or that arise under certain distinct tax regimes, to be disregarded in calculating the tested amount.
 - (4) Part 4 provides for certain external financing costs to be treated as intra-group financing costs for the purposes of calculating the tested amount.
 - (5) Part 5 provides for the calculation of another amount (“the available amount”) in respect of the same period of account of the worldwide group.
 - (6) The available amount derives from net external financing costs disclosed in the financial statements of the worldwide group.
 - (7) Part 6 provides for certain amounts that relate to financial services, or that are dealt with under certain distinct tax regimes, to be disregarded in calculating the available amount.
 - (8) Part 7 provides for the disallowance of the deductions referred to in subparagraph (2) to the extent that the tested amount exceeds the available amount.
 - (9) Part 8 provides for the exemption from the charge to corporation tax of intra-group financing income of relevant group companies.
 - (10) The total amount of income so exempted is limited to the total of the deductions disallowed under Part 7.
 - (11) Part 9 makes provision about commencement etc.

Meaning of “relevant group company”

- 3 (1) For the purposes of this Schedule “relevant group company” means a company that meets conditions A and B.

- (2) Condition A is that the company is either –
 - (a) the ultimate corporate parent of the worldwide group, or
 - (b) a relevant subsidiary of the ultimate corporate parent of the worldwide group.
- (3) For the purposes of this paragraph, a company is a “relevant subsidiary” of the ultimate corporate parent of the worldwide group if –
 - (a) the company is a 75% subsidiary of the ultimate corporate parent,
 - (b) the ultimate corporate parent is beneficially entitled to at least 75% of any profits available for distribution to equity holders of the company,
 - (c) the ultimate corporate parent would be beneficially entitled to at least 75% of any assets of the company available for distribution to its equity holders on a winding-up, or
 - (d) any member of the group is a party to a scheme the main purpose, or one of the main purposes, of which is to secure that the company is not a relevant subsidiary for the purposes of this paragraph.
- (4) Schedule 18 to ICTA (equity holders and profits or assets available for distribution) applies in relation to sub-paragraph (3)(b) and (c) as it applies in relation to section 413(7) of that Act.
- (5) The reference in sub-paragraph (3)(d) to a scheme is to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.
- (6) Condition B is that the company is either –
 - (a) resident in the United Kingdom, or
 - (b) not resident in the United Kingdom and carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

Financial statements and periods of account

- 4 (1) Subject to the following provisions of this paragraph, in this Schedule –
 - (a) references to financial statements of the worldwide group are to consolidated financial statements of the ultimate corporate parent and its subsidiaries, and
 - (b) references to a period of account of the worldwide group are to a period in respect of which such financial statements are prepared.
- (2) Sub-paragraph (3) applies to a period if –
 - (a) consolidated financial statements of the ultimate corporate parent and its subsidiaries are prepared in respect of the period in accordance with accounting standards other than international accounting standards, and
 - (b) the amounts disclosed in those financial statements are materially different from those that would be disclosed in IAS financial statements for the period.
- (3) References in this Schedule to financial statements of the worldwide group for a period to which this sub-paragraph applies are to IAS financial statements for the period.

- (4) Where consolidated financial statements of the ultimate corporate parent and its subsidiaries are not prepared in respect of a period, and that period is 12 months or less –
- (a) references in this Schedule to a period of account of the worldwide group are to that period, and
 - (b) references in this Schedule to financial statements of the worldwide group for a period are to IAS financial statements for that period.
- (5) Where consolidated financial statements of the ultimate corporate parent and its subsidiaries are not prepared in respect of a period, and that period is more than 12 months (“the long period”), references in this Schedule to a period of account of the worldwide group are to –
- (a) the first period of 12 months falling within the long period,
 - (b) any period of 12 months falling within the long period that begins immediately after the end of the period mentioned in paragraph (a), or immediately after the end of a period determined under this paragraph, or
 - (c) any period of less than 12 months that –
 - (i) begins immediately after the end of the period mentioned in paragraph (a) or after the end of a period determined under paragraph (b), and
 - (ii) ends at the end of the long period,and references in this Schedule to financial statements of the worldwide group for a period are to IAS financial statements for that period.
- (6) In this paragraph “IAS financial statements”, in relation to a period, means consolidated financial statements of the ultimate corporate parent and its subsidiaries in respect of the period, prepared in accordance with international accounting standards.

References to consolidated profit and loss account

- 5 References in this Schedule to the consolidated profit and loss account of the worldwide group include any income statement or other equivalent financial statement required to be prepared by the accounting standards in accordance with which the financial statements of the worldwide group are prepared.

Meaning of “relevant accounting period”

- 6 For the purposes of this Schedule a “relevant accounting period” of a relevant group company, in relation to a period of account of the worldwide group, means any accounting period that falls wholly or partly within the period of account of the worldwide group.

Meaning of “group”, “group of entities”, “parent” and “subsidiary”

- 7 (1) For the purposes of this Schedule the following expressions have the meaning for the time being given by international accounting standards –
- “entity”;
 - “group”;
 - “parent”;
 - “subsidiary”.

- (2) The Commissioners may by order amend this paragraph.

Meaning of “ultimate corporate parent”

- 8 (1) For the purposes of this Schedule the “ultimate corporate parent” of a group means a member of the group that –
- (a) is a body corporate, and
 - (b) is not a subsidiary (whether direct or indirect) of another body corporate.
- (2) References in this paragraph to a body corporate do not include –
- (a) the Crown,
 - (b) a Minister of the Crown,
 - (c) a government department,
 - (d) a Northern Ireland department, or
 - (e) a foreign sovereign power.

Meaning of “large” in relation to a group

- 9 (1) For the purposes of this Schedule a group is “large” at any time if (and only if) any member of the group is not at that time within the category of micro, small and medium-sized enterprises as defined in the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 (“the Annex”).
- (2) In its application by virtue of sub-paragraph (1), the Annex has effect subject to the following qualifications.
- (3) Where a member of the group is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) are to be left out of account when applying Article 3(3)(b).
- (4) Article 3 has effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).
- (5) The first sentence of Article 4(1) has effect as if the reference to the latest approved accounting period of a member of the group were to the current accounting period of that member.
- (6) Article 4 has effect with the omission of –
- (a) the second sentence of paragraph (1) (data to be taken into account from date of closure of accounts),
 - (b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods), and
 - (c) paragraph 3 (estimate in case of newly established enterprise).

Meaning of “hedging relationship”

- 10 Section 707 of CTA 2009 (meaning of “hedging relationship”) applies for the purposes of this Schedule as it applies for the purposes of Part 7 of that Act (derivative contracts).

Meaning of “the Commissioners” and “HMRC”

- 11 In this Schedule –

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
“HMRC” means Her Majesty’s Revenue and Customs.

PART 2

CALCULATION OF THE TESTED AMOUNT

The tested amount

- 12 The tested amount for a period of account of the worldwide group is –
- (a) the sum of the intra-group financing expenses of each relevant group company for that period (see paragraph 13), or
 - (b) where the sum referred to in paragraph (a) is negative, nil.

The intra-group financing expense of a company

- 13 (1) In this Schedule, references to the intra-group financing expense of a company for a period of account of the worldwide group are to the sum of amounts A, B, C and D.
- (2) Amount A is –
- (a) the total of any debits within sub-paragraph (3), less
 - (b) the total of any credits within that sub-paragraph.
- (3) A debit or credit is within this sub-paragraph if –
- (a) it would, apart from this Schedule, be brought into account in a relevant accounting period of the company,
 - (b) it would be so brought into account in respect of a loan relationship –
 - (i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or
 - (ii) under Part 5 of that Act (other loan relationships), and
 - (c) the loan relationship is a group debtor relationship.
- (4) Amount B is –
- (a) the total of any debits within sub-paragraph (5), less
 - (b) the total of any credits within that sub-paragraph.
- (5) A debit or credit is within this sub-paragraph if –
- (a) it would, apart from this Schedule, be brought into account in a relevant accounting period of the company,
 - (b) it would be so brought into account in respect of a derivative contract –
 - (i) under Part 3 of CTA 2009 by virtue of section 573 of that Act (derivative contracts for purposes of trade), or
 - (ii) under Part 5 of that Act by virtue of section 574 of that Act (other derivative contracts), and
 - (c) the company has a hedging relationship between –
 - (i) the contract, and
 - (ii) a liability representing a group debtor relationship.
- (6) In this paragraph “a group debtor relationship” means a loan relationship where –

- (a) the company stands in the position of a debtor as respects the debt in question, and
 - (b) another member of the worldwide group stands in the position of a creditor as respects the debt in question.
- (7) Amount C is the total amount (if any) that would, apart from this Schedule, be brought into account for the purposes of corporation tax in relevant accounting periods of the company in respect of the financing cost implicit in payments to other members of the worldwide group made under finance leases relating to plant and machinery.
- (8) Amount D is the total amount (if any) that would, apart from this Schedule, be brought into account for the purposes of corporation tax in relevant accounting periods of the company in respect of the financing cost payable on debt factoring, or any similar transaction, entered into with other members of the worldwide group.
- (9) In a case where –
- (a) a debit, credit or other amount would, apart from this Schedule, be brought into account in an accounting period, and
 - (b) a proportion of that period does not fall within the period of account of the worldwide group,
- the debit, credit or other amount is to be reduced, for the purposes of this paragraph, by the same proportion.
- (10) This paragraph is subject to Part 3.

PART 3

TESTED AMOUNT: AMOUNTS TO BE DISREGARDED

Lending businesses

- 14 (1) This paragraph applies to the calculation of amount A, B, C or D in paragraph 13.
- (2) In making such a calculation, an intra-group finance amount must be disregarded if the following conditions are met.
- (3) Condition A is that, in the period of account, the relevant group company is a party to the intra-group finance arrangement in the course of activities forming an integral part of a lending business of that company.
- (4) Condition B is that at least 75% of the gross trading income of the lending business for the period of account is derived from lending activities undertaken with non-connected entities.
- (5) In this paragraph –
- “lending activities” means –
- (a) acceptance of deposits or other repayable funds;
 - (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting);
 - (c) finance leasing (as lessor);
 - (d) issuing and administering means of payment;
 - (e) provision of guarantees or commitments to provide money;

- (f) money transmission services;
- “lending business” means a business that consists of or includes one or more lending activities;
- “non-connected entity” means an entity that is not a member of the worldwide group;
- “gross trading income”, in relation to a lending business, means income that is –
 - (a) earned by the lending business from its lending activities, and
 - (b) accounted for as such under generally accepted accounting practice (see section 50 of FA 2004), before any deduction (whether for expenses or otherwise).

Insurance businesses

- 15 (1) This paragraph applies to the calculation of amount A or B in paragraph 11.
- (2) In calculating such an amount, a debit or credit must be disregarded if –
- (a) the relevant group company is a regulated insurance company, and
 - (b) one or other of the following conditions is met.
- (3) Condition A is that, in the period of account, the relevant group company is a party to the intra-group finance arrangement in the course of activities forming an integral part of a general insurance business of that company.
- (4) Condition B is that, in the period of account –
- (a) the relevant group company is a party to the intra-group finance arrangement in the course of activities forming an integral part of an insurance business of that company (other than a general insurance business), and
 - (b) only investment acquisition debt is provided under the group debtor relationship.
- (5) In this paragraph –
- “contract of insurance” has the same meaning as in Chapter 1 of Part 12 of ICTA;
 - “general insurance business” has the same meaning as in the FSA Handbook;
 - “insurance business” (except in the expression “general insurance business”) means the business of entering into contracts of insurance;
 - “investment acquisition debt” means debt which is incurred –
 - (a) on terms requiring its repayment less than one year after it is incurred, and
 - (b) for the purpose of enabling the relevant group company to acquire assets, which on acquisition, would be assets of its long-term insurance fund;
 - “long-term insurance fund” has the same meaning as in Chapter 1 of Part 12 of ICTA;
 - “regulated insurance company” means a company that is authorised in the state or territory in which it is incorporated to carry on insurance business.

Financial instrument dealing

- 16 (1) This paragraph applies to the calculation of amount A or B in paragraph 13.
- (2) In making such a calculation, a debit or credit must be disregarded if, in the period of account, the relevant group company is a party to the intra-group finance arrangement in the course of activities forming an integral part of a financial instrument dealing business of that company.
- (3) For the purposes of this section, a business is a financial instrument dealing business if –
- (a) the business consists of or includes dealing in financial instruments, and
 - (b) profits on the dealing in financial instruments form part of the trading profits of the business.
- (4) In this section “financial instrument” means anything that is a financial instrument for any purpose of the FSA Handbook.

Maintenance of regulatory capital

- 17 (1) This paragraph applies to the calculation of amount A or B in paragraph 13.
- (2) In making such a calculation, a debit or credit must be disregarded if the following conditions are met.
- (3) Condition A is that the intra-group finance arrangement is a capital instrument.
- (4) Condition B is that, in the period of account, the General Prudential Sourcebook obliges the relevant group company to maintain capital resources equal to or in excess of the company’s capital resources requirement.
- (5) Condition C is that, in the period of account, the relevant group company uses the intra-group finance arrangement in complying with that obligation.
- (6) This paragraph is subject to paragraph 18.
- (7) In this paragraph and paragraph 18 –
- “capital instrument”, “capital resources” and “capital resources requirement” have the same meanings as in the FSA Handbook;
 - “General Prudential Sourcebook” means the General Prudential Sourcebook for Banks, Building Societies, Insurers and Investment Firms that forms part of the FSA Handbook.
- 18 (1) This paragraph applies if –
- (a) a debit or credit falls to be disregarded under paragraph 17(2), and
 - (b) at any time in the period of account, capital instruments make up an unreasonable part of the capital resources maintained by the relevant group company.
- (2) Either –
- (a) the whole of the debit or credit, or
 - (b) part of the debit or credit, or
 - (c) none of the debit or credit,
- is to be disregarded under paragraph 17(2).

- (3) The question of which of the options in sub-paragraph (2) is to be taken is to be determined –
 - (a) in accordance with any agreement on the question that is made between HMRC and the relevant group company or the worldwide group, or
 - (b) if there is no such agreement, in accordance with what is just and reasonable.
- (4) In determining what it is just and reasonable, regard must be had, in particular, to –
 - (a) the extent to which the part of the company’s capital resources made up of capital instruments is unreasonable, and
 - (b) the way in which other debits or credits relating to the same company have been dealt with under this paragraph.
- (5) References in the other provisions of this Schedule to an amount falling to be disregarded under paragraph 17(2) include references to cases where the amount that falls to be disregarded is determined under sub-paragraph (2)(a) or (b).

Financial services holding companies

- 19 (1) This paragraph applies to the calculation of amount A or B in paragraph 13.
- (2) In making such a calculation, a debit or credit must be disregarded if the following conditions are met.
- (3) Condition A is that the relevant group company (“the holding company”) does not carry on a trade.
- (4) Condition B is that –
 - (a) in the period of account, an amount is on loan from the holding company to one or more subsidiary companies, and
 - (b) at each time in that period when such an amount is on loan, the amount on loan is at least 90% of the amount of debt at that time under the intra-group finance arrangement to which the debit or credit relates.
- (5) Condition C is that, in relation to each of the subsidiary companies to which an amount is on loan –
 - (a) one or more relevant calculations fall to be made in relation to the amount on loan, and
 - (b) in making one or more of those relevant calculations, a debit or credit falls to be disregarded under paragraph 17.
- (6) The Commissioners may, by regulations, make provision for determining –
 - (a) the amount on loan from the holding company to subsidiary companies at any time, and
 - (b) the amount of debt under the intra-group finance arrangement at any time.
- (7) This paragraph is subject to paragraph 20.
- (8) In this paragraph and paragraph 20 –
“holding company” has the meaning given in sub-paragraph (3);

“relevant calculation” means the calculation of amount A or B in paragraph 13;

“subsidiary company” means a relevant group company which is a 75% subsidiary of the holding company.

- 20 (1) This paragraph applies if—
- (a) in relation to a period of account of the worldwide group, one or more debits or credits that relate to a particular intra-group finance arrangement (“the holding company’s debt arrangement”) are to be disregarded (by virtue of paragraph 19(2)) in calculating amount A or B in paragraph 13(1), and
 - (b) the total amount of debt under the holding company’s debt arrangement in the period of account exceeds the total amount of debt under the subsidiary companies’ debt arrangements in the period of account.
- (2) The relevant fraction of each of those debits and credits is to be disregarded in calculating amount A or B in paragraph 13.
- (3) For that purpose, the relevant fraction is —

$$\frac{H - S}{H}$$

where —

H is the average amount of debt under the holding company’s debt arrangement in the period of account;

S is the average amount of debt under the subsidiary companies’ debt arrangements in that period.

- (4) The Commissioners may, by regulations, make provision for determining—
- (a) the total amount of debt under the holding company’s debt arrangement in a period of account, and
 - (b) the amount of debt under the subsidiary companies’ debt arrangements in a period of account.
- (5) In this paragraph—
- “holding company’s debt arrangement” has the meaning given in sub-paragraph (1)(a);
- “subsidiary companies’ debt arrangements” means the intra-group finance arrangement or arrangements to which the disregarded debits and credits relate (and for this purpose “disregarded debit or credit” means a debit or credit that falls to be disregarded under paragraph 17, as mentioned in paragraph 19(5)(b)).

Companies engaged in oil extraction activities

- 21 (1) This paragraph applies to the calculation of amount A, B, C or D in paragraph 13.
- (2) In making such a calculation, an intra-group finance amount must be disregarded if the following conditions are met.
- (3) Condition A is that the relevant group company is treated, in the accounting period in which the intra-group finance amount is brought into account, as carrying on a separate trade under section 492 of ICTA (treatment of oil extraction activities etc for tax purposes).

- (4) Condition B is that the intra-group finance amount falls to be brought into account in calculating the profits of that trade for that accounting period.

Tonnage tax companies

- 22 (1) This paragraph applies to the calculation of amount A or B in paragraph 13.
- (2) In making such a calculation, an intra-group finance amount must be disregarded if the following condition is met.
- (3) The condition is that the intra-group finance amount represents an adjustment made under section 61 or 62 of Schedule 22 to FA 2000 (treatment of finance costs of tonnage tax companies).

Interpretation

- 23 In this Part –

“FSA Handbook” means the Handbook made by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8);

“intra-group finance amount” means –

- (a) a debit or credit within paragraph 13(3),
- (b) a debit or credit within paragraph 13(5),
- (c) an amount falling to be brought into account for the purposes of corporation tax as mentioned in paragraph 13(7), or
- (d) an amount falling to be brought into account for the purposes of corporation tax as mentioned in paragraph 13(8);

“intra-group finance arrangement” means –

- (a) in the case of a debit or credit within paragraph 13(3), the loan relationship to which the debit or credit relates;
- (b) in the case of a debit or credit within paragraph 13(5), the derivative contract to which the debit or credit relates;
- (c) in the case of an amount within paragraph 13(7), the finance lease to which the amount relates;
- (d) in the case of an amount within paragraph 13(8), the debt factoring or similar transaction to which the amount relates.

PART 4

TESTED AMOUNT: EXTERNAL FINANCE TREATED AS INTRA-GROUP FINANCE

Treatment of certain external finance as intra-group financing expense

- 24 (1) This paragraph applies to the calculation of amount A, C or D in paragraph 13.
- (2) In making such a calculation, an external finance amount must be taken into account if the following conditions are met.
- (3) Condition A is that the relevant group company is –
- (a) a party to the external finance arrangement as part of a relevant scheme, or
 - (b) in a case where the external finance arrangement is a loan relationship, a party to an arrangement that is related to the loan relationship as part of a relevant scheme.

- (4) Condition B is that the main purpose, or one of the main purposes, of the relevant scheme is to reduce the tested amount by securing—
 - (a) that the external finance amount is incurred, and
 - (b) that one or more amounts are not incurred that would, if incurred, fall within amount A, C or D in paragraph 13.
- (5) The total amount of the external finance amounts that are to be taken into account by virtue of sub-paragraph (2) in the relevant accounting period is not to exceed the amount by which the tested amount for that period is reduced by the operation of the relevant scheme.
- (6) Condition A is to be taken not to be met by virtue of the relevant group company being a party to an arrangement related to the external finance arrangement if the related arrangement is a guarantee and either—
 - (a) it is reasonable to assume that the person to whom the guarantee is given would have entered into the related loan relationship even if the guarantee had not been given, or
 - (b) the main purpose of the guarantee is to reduce the cost to the relevant group company of its borrowing under the related loan relationship.
- (7) Condition B is to be taken not to be met where the relevant group company is a party to the relevant scheme in the ordinary course of—
 - (a) a trade carried on by the relevant group company, or
 - (b) the relevant group company's participation in a cash pooling arrangement.
- (8) The Commissioners may, by regulations, make provision for determining—
 - (a) what is a cash-pooling arrangement, and
 - (b) when a company is participating in a cash-pooling arrangement.

Relevant schemes

- 25 (1) In this Part “relevant scheme” means a scheme that involves all of the following (whether or not it also involves any other persons)—
 - (a) the relevant group company;
 - (b) one or more other members of the worldwide group;
 - (c) one or more other persons who are not members of the worldwide group.
- (2) For that purpose, the reference to a scheme is a reference to any scheme, arrangements or understanding of any kind whatsoever, whether or not legally enforceable.

Interpretation

- 26 In this Part—
 - “external finance amount” means—
 - (a) a debit or credit which does not (apart from paragraph 24) fall to be taken into account in calculating amount A in paragraph 13, but only because no person who is a member of the worldwide group stands in the position of a creditor as respects the debt in question,
 - (b) an amount which does not (apart from paragraph 24) fall to be taken into account in calculating amount C in paragraph

13, but only because the amount is in respect of the financing cost implicit in a payment to a person who is not a member of the worldwide group, or

- (c) an amount which does not (apart from paragraph 24) fall to be taken into account in calculating amount D in paragraph 13, but only because the amount is in respect of the financing cost payable on debt factoring, or a similar transaction, entered into with a person who is not a member of the worldwide group;

“external finance arrangement” means –

- (a) in relation to the calculation of amount A in paragraph 13, the loan relationship to which a debit or credit relates,
- (b) in relation to the calculation of amount C in paragraph 13, the finance lease to which an amount relates, or
- (c) in relation to the calculation of amount D in paragraph 13, the debt factoring or similar transaction to which an amount relates.

PART 5

CALCULATION OF THE AVAILABLE AMOUNT

The available amount

- 27 (1) The available amount for a period of account of the worldwide group is –
- (a) the non-UK external finance expense of the group for that period (see paragraph 28), less
 - (b) the worldwide external finance income of the group for that period (see paragraph 29).
- (2) Where the amount determined in accordance with sub-paragraph (1) is negative, the available amount is nil.

Non-UK external finance expense of group

- 28 (1) The “non-UK external finance expense” of the worldwide group for a period is –
- (a) the worldwide external finance expense of the group for the period, less
 - (b) the UK external finance expense of the group for the period.
- (2) The “worldwide external finance expense” of the worldwide group for a period is the total of the amounts disclosed in the consolidated profit and loss account of the group for that period in respect of –
- (a) interest payable on amounts borrowed,
 - (b) amortisation of discounts relating to amounts borrowed,
 - (c) amortisation of premiums relating to amounts borrowed,
 - (d) amortisation of ancillary costs relating to amounts borrowed,
 - (e) costs relating to financial instruments where the financial instruments relate to amounts borrowed,
 - (f) the financing cost implicit in payments made under finance leases relating to plant and machinery,
 - (g) the financing cost relating to debt factoring,

- (h) costs of such other description as may be specified in regulations made by the Commissioners, or
 - (i) an adjustment to an amount within any of paragraphs (a) to (h) representing foreign exchange differences.
- (3) An amount that falls within any of paragraphs (a) to (i) of sub-paragraph (2) is to be disregarded for the purposes of that sub-paragraph to the extent that—
- (a) the amount represents, or represents an adjustment to, a dividend payable in respect of redeemable preference shares, and
 - (b) those shares are recognised as a liability on the consolidated balance sheet comprised in the financial statements of the group for the period.
- (4) The “UK external finance expense” of the worldwide group for a period is, subject to sub-paragraph (7), such amount of the worldwide external finance expense of the group for the period as is attributable to amounts disclosed in financial statements of UK members of the worldwide group.
- (5) For this purpose, a member of the worldwide group is a “UK member” of the group if it falls within sub-paragraph (6) at any time during the period.
- (6) A member of the worldwide group falls within this sub-paragraph at any time if at that time it is—
- (a) resident in the United Kingdom, or
 - (b) not resident in the United Kingdom and carrying on a trade in the United Kingdom through a permanent establishment in the United Kingdom.
- (7) In a case where a UK member of the worldwide group does not fall within sub-paragraph (6) for any proportion of the period, the “UK external finance expense” of the group for the period is to be reduced by the same proportion.
- (8) This paragraph is subject to Part 6.

Worldwide external finance income of group

- 29 (1) The worldwide external finance income of the worldwide group for a period is the total of the amounts disclosed in the consolidated profit and loss account of the group for that period in respect of—
- (a) interest receivable on amounts loaned,
 - (b) discounts receivable relating to amounts loaned,
 - (c) premiums receivable relating to amounts loaned,
 - (d) income relating to financial instruments where the financial instruments relate to amounts loaned,
 - (e) the financing income implicit in payments received under finance leases relating to plant and machinery,
 - (f) income of such other description as may be specified by regulations made by the Commissioners, or
 - (g) an adjustment to an amount within any of paragraphs (a) to (f) representing foreign exchange differences.
- (2) An amount that falls within any of paragraphs (a) to (g) of sub-paragraph (1) is to be disregarded for the purposes of that sub-paragraph to the extent that—

- (a) the amount represents, or represents an adjustment to, a dividend receivable in respect of redeemable preference shares, and
- (b) those shares are recognised as an asset on the consolidated balance sheet comprised in the financial statements of the group for the period.

(3) This paragraph is subject to Part 6.

References to amounts disclosed in group's consolidated profit and loss account

- 30 (1) References in this Part to amounts disclosed in the consolidated profit and loss account of the worldwide group for a period include any amount disclosed in respect of a joint venture that is a member of the group, however it is disclosed.
- (2) References in this Part to amounts disclosed in the consolidated profit and loss account of the worldwide group for a period do not include—
- (a) any amount disclosed in respect of a group pension scheme, or
 - (b) any amount disclosed in respect of any entity that is not a member of the group.

Translation of amounts into sterling

- 31 (1) References in this Part to an amount disclosed in the consolidated profit and loss account of the worldwide group for a period are, where the amount is denominated in a currency other than sterling, to that amount translated into its sterling equivalent.
- (2) The exchange rate by reference to which the amount is to be translated is the average rate of exchange for the period calculated from daily spot rates.

Meaning of accounting expressions used in this Part

- 32 Subject to any provision to the contrary, expressions used in this Part have the meaning for the time being given by international accounting standards.

PART 6

AVAILABLE AMOUNT: AMOUNTS TO BE DISREGARDED

Application of this Part

- 33 This Part applies to—
- (a) the calculation under paragraph 28 of the non-UK external finance expense of the worldwide group for a period, and
 - (b) the calculation under paragraph 29 of the worldwide external finance income of the worldwide group for a period.

Lending businesses

- 34 (1) In making a calculation under paragraph 28 or 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account must be disregarded if the following conditions are met.

- (2) Condition A is that the amount relates to activities of a member of the worldwide group in the period of account that form an integral part of a lending business of that member of the group.
- (3) Condition B is that at least 75% of the gross trading income of the lending business for the period of account is derived from lending activities undertaken with non-connected entities.
- (4) In this paragraph –
- “lending activities” means –
- (a) acceptance of deposits or other repayable funds;
 - (b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting);
 - (c) finance leasing (as lessor);
 - (d) issuing and administering means of payment;
 - (e) provision of guarantees or commitments to provide money;
 - (f) money transmission services;
- “lending business” means a business that consists of or includes one or more lending activities;
- “gross trading income”, in relation to a lending business, means income that is –
- (a) earned by the lending business from its lending activities, and
 - (b) accounted for as such under generally accepted accounting practice (see section 50 of FA 2004),
- before any deduction (whether for expenses or otherwise).

Insurance businesses

- 35 (1) In making a calculation under paragraph 28, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account must be disregarded if –
- (a) the amount is not a UK external finance expense of the worldwide group (and so does not fall to be deducted under paragraph 28(1)(b)),
 - (b) the amount relates to liabilities of a member of the group that is a regulated insurance company, and
 - (c) the liabilities are incurred for the purposes of an insurance business of that company.
- (2) In making a calculation under paragraph 29, an amount disclosed in the consolidated profit and loss account must be disregarded if –
- (a) the amount relates to assets of a member of the group that is a regulated insurance company, and
 - (b) the assets are acquired in the course of investment activities that are an integral part of an insurance business of that company.
- (3) In this paragraph –
- “contract of insurance” has the same meaning as in Chapter 1 of Part 12 of ICTA;
- “insurance business” means the business of entering into contracts of insurance;

- “member of the group bearing the expense” means the member of the group to whose financial statements the amount is attributable;
- “regulated insurance company” means a company that is authorised in the state or territory in which it is incorporated to carry on insurance business.

Financial instrument dealing

- 36 (1) In making a calculation under paragraph 28 or 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account must be disregarded if the following condition is met.
- (2) The condition is that the amount relates to activities of a member of the worldwide group in the period of account that form an integral part of a financial instrument dealing business of that member of the group.
- (3) For the purposes of this section, a business is a financial instrument dealing business if –
- (a) the business consists of or includes dealing in financial instruments, and
 - (b) profits on the dealing in financial instruments form part of the trading profits of the business.
- (4) In this section “financial instrument” means anything that is a financial instrument for any purpose of the FSA Handbook.

Maintenance of regulatory capital

- 37 (1) In making a calculation under paragraph 28 or 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account must be disregarded if the following conditions are met.
- (2) Condition A is that the amount relates to a hybrid instrument or innovative instrument.
- (3) Condition B is that, in the period of account, a member of the worldwide group must maintain a capital requirement.
- (4) Condition C is that, in the period of account, that member of the worldwide group uses the hybrid instrument or innovative instrument to maintain that capital requirement.
- (5) In this paragraph –
- “capital requirement” has the same meaning as in the Basel Accord;
 - “hybrid instrument” has the same meaning as in the Basel Accord;
 - “innovative instrument” has the same meaning as in the Basel Accord.

Loans for maintenance of regulatory capital

- 38 (1) In making a calculation under paragraph 28 or 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group that is not subject to a capital requirement (“member A”) is a party to a relevant debt arrangement.

- (3) Condition B is that the external finance amount relates to the relevant debt arrangement.
- (4) Condition C is that –
 - (a) in the period of account, an amount is on loan from member A to one or more other members of the worldwide group, and
 - (b) at each time in that period when such an amount is on loan, the amount on loan is at least 90% of the amount of debt at that time under the relevant debt arrangement.
- (5) Condition D is that, in relation to each of the other group members to which an amount is on loan from member A –
 - (a) one or more relevant calculations fall to be made in relation to the amount on loan, and
 - (b) in making one or more of those relevant calculations, an amount falls to be disregarded under paragraph 37.
- (6) The Commissioners may, by regulations, make provision for determining –
 - (a) the amount of debt under the relevant debt arrangement at any time, and
 - (b) the amount on loan from member A to subsidiary companies at any time.
- (7) This paragraph is subject to paragraph 39.
- (8) In this paragraph and paragraph 39 –
 - “capital requirement” has the same meaning as in the Basel Accord;
 - “external finance amount” has the meaning given in sub-paragraph (1);
 - “member A” has the meaning given in sub-paragraph (2);
 - “relevant calculation” means a calculation under paragraph 28 or 29;
 - “relevant debt arrangement” means an arrangement within sub-paragraph (9) or (10).
- (9) An arrangement is within this sub-paragraph if –
 - (a) it is a loan relationship –
 - (i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or
 - (ii) under Part 5 of that Act (other loan relationships),
 - (b) member A stands in the position of a debtor in relation to the debt in question, and
 - (c) a non-connected entity stands in the position of a creditor in relation to the debt in question.
- (10) An arrangement is within this sub-paragraph if –
 - (a) it is a derivative contract –
 - (i) under Part 3 of CTA 2009 by virtue of section 573 of that Act (derivative contracts for purposes of trade), or
 - (ii) under Part 5 of that Act by virtue of section 574 of that Act (other derivative contracts), and
 - (b) member A has a hedging relationship between –
 - (i) the contract, and
 - (ii) a liability representing a loan relationship where member A stands in the position of a debtor, and a non-connected entity

stands in the position of a creditor, in relation to the debt in question.

- 39 (1) This paragraph applies if –
- (a) in relation to a period of account of the worldwide group, one or more external finance amounts that relate to a particular relevant debt arrangement (“member A’s debt arrangement”) are to be disregarded (by virtue of paragraph 38(1)) in making a calculation under paragraph 28 or 29, and
 - (b) the total amount of debt under member A’s debt arrangement in the period of account exceeds the total amount of debt under the other group companies’ debt arrangements in the period of account.
- (2) The relevant fraction of each of those external finance amounts is to be disregarded in making the calculation under paragraph 28 or 29.
- (3) For that purpose, the relevant fraction is –

$$\frac{H - S}{H}$$

where –

H is the total amount of debt under member A’s debt arrangement in the period of account;

S is the total amount of debt under the other group companies’ debt arrangements in that period.

- (4) The Commissioners may, by regulations, make provision for determining –
- (a) the total amount of debt under member A’s debt arrangement in a period of account, and
 - (b) the amount of debt under the other group companies’ debt arrangements in a period of account.
- (5) In this paragraph –
- “member A’s debt arrangement” has the meaning given in subparagraph (1)(a);
 - “other group companies’ debt arrangements” means the intra-group finance arrangement or arrangements to which the disregarded debits and credits relate (and for this purpose “disregarded debit or credit” means a debit or credit that falls to be disregarded under paragraph 37, as mentioned in paragraph 38(5)(b)).

Income from oil extraction subject to particular tax treatment in UK

- 40 (1) In making a calculation under paragraph 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate trade under section 492 of ICTA (treatment of oil extraction activities etc for tax purposes).
- (3) Condition B is that the external finance amount falls to be brought into account for the purposes of corporation tax in calculating the profits of that trade for that accounting period.

- (4) In this paragraph “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account.

Income from shipping subject to particular tax treatment in UK

- 41 (1) In making a calculation under paragraph 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group is, for a relevant accounting period, a tonnage tax company for the purposes of Schedule 22 to FA 2000.
- (3) Condition B is that the external finance amount is relevant shipping income of that company under paragraph 50 of that Schedule (interest etc included in relevant shipping income) for that accounting period.
- (4) In this paragraph—
“relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account;
“relevant shipping income” has the same meaning as in Schedule 22 to FA 2000 (see Part 6 of that Schedule).

Income from property rental subject to particular tax treatment in UK

- 42 (1) In making a calculation under paragraph 29, an amount disclosed in, or comprised in an amount disclosed in, the consolidated profit and loss account (“the external finance amount”) must be disregarded if the following conditions are met.
- (2) Condition A is that a member of the worldwide group is treated in a relevant accounting period as carrying on a separate business under section 113 of FA 2006 (ring-fencing of tax exempt business).
- (3) Condition B is that the external finance amount falls to be brought into account in calculating the profits arising from that business in that accounting period.
- (4) In this paragraph “relevant accounting period”, in relation to a member of the worldwide group, means an accounting period of the member that falls wholly or partly within the period of account.

Interpretation

- 43 In this Part—
“Basel Accord” means the accord known as Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework – Comprehensive Version;
“non-connected entity” means an entity that is not part of the worldwide group.

PART 7

DISALLOWANCE OF DEDUCTIONS

Introductory

- 44 (1) This Part applies where, for a period of account of the worldwide group (“the relevant period of account”) –
- (a) the tested amount (determined in accordance with Part 2), exceeds
 - (b) the available amount (determined in accordance with Part 5).
- (2) In this Part “the total disallowed amount” means the difference between the amounts referred to in paragraphs (a) and (b) of sub-paragraph (1).
- (3) References in this Part to a company to which this Part applies are to a company that is a relevant group company at any time during the relevant period of account.

Group required to make return allocating total disallowed amount

- 45 (1) The companies to which this Part applies must make a return to HMRC.
- (2) The return must –
- (a) be signed on behalf of each company to which this Part applies by a proper officer of that company, and
 - (b) be made before the end of the period of 12 months beginning with the end of the relevant period of account.
- (3) The return must show –
- (a) the tested amount for the relevant period of account,
 - (b) the available amount for that period, and
 - (c) the total disallowed amount.
- (4) The return must also, in relation to each company to which this Part applies –
- (a) show the intra-group financing expense for the relevant period of account,
 - (b) show, for each relevant accounting period of the company, the amount (if any) comprised in that intra-group financing expense in respect of each of amounts A, B, C and D, and
 - (c) specify the amount (if any) of each amount disclosed pursuant to paragraph (b) that is to be disallowed.
- (5) The sum of the amounts specified under sub-paragraph (4)(c) must equal the total disallowed amount.
- (6) In this paragraph a reference to amount A, B, C or D is to amount A, B, C or D determined in accordance with paragraph 13 (definition of intra-group financing expense).
- (7) Subsections (3) and (4) of section 108 of TMA 1979 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.

Effect of submission of return

- 46 For the purpose of determining the amounts to be brought into account in a relevant accounting period of a company to which this Part applies, each amount required to be disclosed, in relation to the company, under paragraph 45(4)(b) is to be reduced by the amount (if any) of that amount that is specified as disallowed under paragraph 45(4)(c).

Failure of group to submit return

- 47 (1) This paragraph applies if the companies to which this Part applies do not submit a return in accordance with paragraph 45.
- (2) For the purpose of determining the amounts to be brought into account in a relevant accounting period of a company to which this Part applies, each relevant amount is to be reduced by –

$$\frac{RA}{TA} \times TDA$$

where –

RA is the relevant amount,

TA is the tested amount for the relevant period of account, and

TDA is the total disallowed amount.

- (3) In this paragraph “relevant amount” means an amount that –
- (a) would, apart from this paragraph, be brought into account in a relevant accounting period of a company to which this Part applies, and
 - (b) is comprised in the intra-group financing expense of that company for the relevant period of account in respect of amount A, B, C or D.
- (4) In this paragraph a reference to amount A, B, C or D is to amount A, B, C or D determined in accordance paragraph 13.

PART 8

TREATMENT OF INTRA-GROUP FINANCING INCOME

Introductory

- 48 (1) This Part applies where, for a period of account of the worldwide group (“the relevant period of account”) –
- (a) the tested amount (determined in accordance with Part 2), exceeds
 - (b) the available amount (determined in accordance with Part 5).
- (2) In this Part “the total disallowed amount” means the difference between the amounts referred to in paragraphs (a) and (b) of sub-paragraph (1).
- (3) References in this Part to a company to which this Part applies are to a company that is a relevant group company at any time during the relevant period of account.

Exemption from charge to corporation tax for certain UK intra-group financing income

- 49 (1) This paragraph applies where –

- (a) a company to which this Part applies (“the recipient”) receives intra-group financing income that falls to be brought into account in a relevant accounting period of the recipient,
 - (b) that income is received from another company to which this Part applies (“the payer”), and
 - (c) the amount that falls to be brought into account in a relevant accounting period of the payer in respect of the payment is reduced under Part 7.
- (2) The amount to be brought into account in the accounting period of the recipient mentioned in sub-paragraph (1)(a) is to be reduced by the amount of the reduction mentioned in sub-paragraph (1)(c).
- (3) For the purposes of this paragraph, where –
- (a) an amount (“the composite amount”) falls to be brought into account in a relevant accounting period of the payer in respect of payments to the recipient and to any other member of the worldwide group, and
 - (b) the composite amount is reduced under Part 7,
- the amount that falls to be brought into account in that accounting period in respect of the payment to the recipient is treated as reduced under Part 7 by the proportion by which the composite amount is reduced under that Part.
- (4) Sub-paragraph (2) is subject to paragraphs 52 to 54 (which make provision for limiting the total reductions effected in relation to companies to which this Part applies under that sub-paragraph and under paragraph 50(2) to the total disallowed amount).

Exemption from charge to corporation tax for certain non-UK intra-group financing income

- 50 (1) This paragraph applies where –
- (a) a company to which this Part applies (“the recipient”) receives intra-group financing income that falls to be brought into account in a relevant accounting period of the recipient,
 - (b) that income is received from a company that is not a company to which this Part applies (“the payer”), and
 - (c) at the time the income is received, the payer –
 - (i) meets condition A in paragraph 3 (company is ultimate corporate parent or 75% subsidiary etc), and
 - (ii) does not meet condition B in that paragraph (company is UK resident etc).
- (2) The amount to be brought into account in the accounting period of the recipient mentioned in sub-paragraph (1)(a) is to be reduced to nil.
- (3) Sub-paragraph (2) is subject to paragraphs 52 to 54 (which make provision for limiting the total reductions effected in relation to companies to which this Part applies under that sub-paragraph and under paragraph 49(2) to the total disallowed amount).

Meaning of “unrestricted reduction” and “income exemption limitation”

- 51 (1) In this Part an “unrestricted reduction” means a reduction determined in accordance with paragraph 49(2) or 50(2).

- (2) In this Part the “income exemption limitation” means the amount (if any) by which—
- (a) the total of the unrestricted reductions, exceeds
 - (b) the total disallowed amount.

Group required to make return allocating the income exemption limitation

- 52 (1) The companies to which this Part applies must make a return to HMRC.
- (2) The return must—
- (a) be signed on behalf of each company to which this Part applies by a proper officer of that company,
 - (b) be made before the end of the period of 12 months beginning with the end of the relevant period of account.
- (3) The return must show—
- (a) the total of the unrestricted reductions,
 - (b) the total disallowed amount, and
 - (c) the income exemption limitation.
- (4) Unless the income exemption limitation is nil, the return must also, in relation to each company to which this Part applies—
- (a) show each unrestricted reduction, and
 - (b) specify the amount (if any) by which each unrestricted reduction is to be reduced.
- (5) The sum of the amounts specified under sub-paragraph (4)(b) must equal the income exemption limitation.
- (6) Subsections (3) and (4) of section 108 of TMA 1979 (responsibility of company officers: meaning of “proper officer”) apply for the purposes of this paragraph as they apply for the purposes of that section.

Effect of submission of return

- 53 Each unrestricted reduction is to be reduced by the amount (if any) of the amount specified in relation to it under paragraph 52(4)(b).

Failure of group to submit return

- 54 (1) This paragraph applies if—
- (a) the companies to which this Part applies do not submit a return in accordance with paragraph 52, and
 - (b) the income exemption limitation is greater than nil.
- (2) Each unrestricted reduction is to be reduced by—

$$\frac{UR}{TUR} \times IEL$$

where—

UR is the unrestricted reduction in question,
 TUR is the total of the unrestricted reductions, and
 IEL is the income exemption limitation.

Intra-group financing income

- 55 (1) In this Part, references to intra-group financing income of a company for a period of account of the worldwide group are to amount A, B, C or D.
- (2) Amount A is –
- (a) the total of any credits within sub-paragraph (4), less
 - (b) the total of any debits within that paragraph.
- (3) Where the amount determined in accordance with sub-paragraph (2) is negative, amount A is nil.
- (4) A credit or debit is within this sub-paragraph if –
- (a) it would, apart from this Schedule, be brought into account in a relevant accounting period of the company,
 - (b) it would be so brought into account in respect of a loan relationship –
 - (i) under Part 3 of CTA 2009 by virtue of section 297 of that Act (loan relationships for purposes of trade), or
 - (ii) under Part 5 of that Act (other loan relationships), and
 - (c) the loan relationship is a group creditor relationship.
- (5) Amount B is –
- (a) the total of any credits within sub-paragraph (7), less
 - (b) the total of any debits within that sub-paragraph.
- (6) Where the amount determined in accordance with sub-paragraph (5) is negative, amount B is nil.
- (7) A credit or debit is within this sub-paragraph if –
- (a) it would, apart from this Schedule, be brought into account in a relevant accounting period of the company,
 - (b) it would be so brought into account in respect of a derivative contract –
 - (i) under Part 3 of CTA 2009 by virtue of section 573 of that Act (derivative contracts for purposes of trade), or
 - (ii) under Part 5 of that Act by virtue of section 574 of that Act (other derivative contracts), and
 - (c) the company has a hedging relationship between –
 - (i) the contract, and
 - (ii) an asset representing a group creditor relationship.
- (8) In this paragraph “a group creditor relationship” means a loan relationship where –
- (a) the company stands in the position of a creditor as respects the debt in question, and
 - (b) another member of the worldwide group stands in the position of a debtor as respects the debt in question.
- (9) Amount C is the total amount (if any) that would, apart from this Schedule, be brought into account for the purposes of corporation tax in relevant accounting periods of the company in respect of the financing cost implicit in amounts received from other members of the worldwide group under finance leases relating to plant and machinery.

- (10) Amount D is the total amount (if any) that would, apart from this Schedule, be brought into account for the purposes of corporation tax in relevant accounting periods of the company in respect of the financing income receivable on debt factoring, or any similar transaction, entered into with other members of the worldwide group.
- (11) In a case where –
- (a) a credit, debit or other amount would, apart from this Schedule, be brought into account in an accounting period, and
 - (b) a proportion of that period does not fall within the period of account of the worldwide group,
- the credit, debit or other amount is to be reduced, for the purposes of this paragraph, by the same proportion.
- (12) References in this Part to an entity from which intra-group financing income is received are, in the case of intra-group financing income in respect of amount A or B, to the entity that stands in the position of debtor in relation to the debt in question.

PART 9

COMMENCEMENT ETC

Commencement

- 56 This Schedule has effect in relation to periods of account of the worldwide group that end on or after such day as the Treasury may by order appoint (“the commencement date”).

Transitional provision

- 57 (1) This paragraph applies to a period of account of the worldwide group (“the straddling period of account”) that –
- (a) begins before the commencement date, and
 - (b) ends after that date.
- (2) This Schedule has effect in relation to the straddling period of account as if –
- (a) the period began on the commencement date, and
 - (b) the amounts shown in the consolidated profit and loss account of the group for the period were reduced by the proportion of the period that falls before the commencement date.