

## SCHEDULES

### SCHEDULE 7

Section 49

#### LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

##### *Introductory*

1 CTA 2009 is amended as follows.

##### *Non-market loans*

2 In Chapter 15 of Part 5 (loan relationships: tax avoidance), after section 446 insert—

##### *“Non-market loans*

#### **446A Non-market loans**

- (1) This section applies as respects any accounting period if—
  - (a) a company has a debtor relationship in the period,
  - (b) the amount recognised in the company’s accounts in respect of the debt at the time the company became party to the debtor relationship was less than the transaction price,
  - (c) credits in respect of the whole or part of the discount were not brought into account for the purposes of this Part, and
  - (d) in a case where the creditor is a company, the non-qualifying territory condition is met.
- (2) The debits which are to be brought into account for the accounting period for the purposes of this Part by the debtor company in respect of the loan relationship are not to include debits relating to the relevant discount amount, to the extent that that amount is referable to the accounting period.
- (3) In this section “relevant discount amount” means—
  - (a) in a case where credits in respect of the whole of the discount were not brought into account for the purposes of this Part, an amount equal to the whole discount, and
  - (b) in a case where credits in respect of part of the discount were not brought into account for the purposes of this Part, an amount equal to that part of the discount.
- (4) The non-qualifying territory condition referred to in subsection (1)(d) is that the creditor company is—
  - (a) resident for tax purposes in a non-qualifying territory at any time in the accounting period, or
  - (b) effectively managed in a non-taxing non-qualifying territory at any such time.

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*Status: This is the original version (as it was originally enacted).*

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(5) In this section—

“discount” means the difference between the two amounts referred to in subsection (1)(b);

“non-qualifying territory” has the meaning given in section 173 of TIOPA 2010;

“non-taxing non-qualifying territory” means a non-qualifying territory under whose law companies are not liable to tax by reason of domicile, residence or place of management;

“resident for tax purposes” means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management.”

### *Transfer pricing*

3 In section 446 (loan relationships: bringing transfer-pricing adjustments into account), after subsection (7) insert—

“(8) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit.”

4 In section 693 (derivative contracts: bringing transfer-pricing adjustments into account), after subsection (5) insert—

“(6) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit.”

### *Exchange gains and losses*

5 In section 447 (exchange gains and losses on debtor relationships: loans disregarded under Part 4 of TIOPA 2010), after subsection (4) insert—

“(4A) If the debtor relationship is to any extent matched, subsections (2) and (3) apply to leave out of account only the lesser of—

(a) the amount of the exchange gain or loss (in the case of subsection (2)) or the proportion of the exchange gain or loss (in the case of subsection (3)) which would be left out of account apart from this subsection, and

(b) the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil).”

6 In section 448 (exchange gains and losses on debtor relationships: equity notes where holder associated with issuer), after subsection (2) insert—

“(3) If the debtor relationship is to any extent matched, subsection (2) applies to leave out of account only the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil).”

*Status: This is the original version (as it was originally enacted).*

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- 7 In section 449 (exchange gains and losses on creditor relationships: no corresponding debtor relationship), after subsection (4) insert—
- “(4A) If the creditor relationship is to any extent matched, subsection (2) applies to leave out of account only the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil).”
- 8 In section 451 (exception to section 449 where loan exceeds arm’s length amount), after subsection (4) insert—
- “(4A) If the creditor relationship is to any extent matched, subsections (3) and (4) apply to leave out of account only the lesser of—
- (a) the proportion of the exchange gain or loss which would be left out of account apart from this subsection, and
  - (b) the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil).”
- 9 (1) Section 452 (exchange gains and losses where loan not on arm’s length terms) is amended as follows.
- (2) For subsection (3) substitute—
- “(3) Subsections (4) and (5) apply if, because of a claim made under section 192(1) of TIOPA 2010, or because of the claim that is assumed to be made under subsection (2)—
- (a) one company is treated for any purpose as having a debtor relationship, or
  - (b) more than one company is treated for any purpose as having a debtor relationship represented by the same liability.”
- (3) In subsection (4)—
- (a) after “exchange gains” insert “from that debtor relationship (in a subsection (3)(a) case) or”;
  - (b) after “those debtor relationships” insert “(in a subsection (3)(b) case)”;
  - (c) for the words from “debits” to the end substitute “exchange gains or the proportion of the exchange gains to be left out of account under section 447 by the issuing company in respect of the loan relationship”.
- (4) In subsection (5)—
- (a) after “exchange losses” insert “from that debtor relationship (in a subsection (3)(a) case) or”;
  - (b) after “those debtor relationships” insert “(in a subsection (3)(b) case)”;
  - (c) for the words from “credits” to the end substitute “exchange losses or the proportion of the exchange losses to be left out of account under section 447 by the issuing company in respect of the loan relationship”.
- (5) After subsection (5) insert—
- “(5A) In this section “issuing company” is to be construed in accordance with section 191(1)(a) of TIOPA 2010.”
- 10 After section 475A insert—

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*Status: This is the original version (as it was originally enacted).*

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*“Meaning of “matched”*”

**475B Meaning of “matched”**

- (1) This section applies for the purposes of this Part.
  - (2) A loan relationship of a company is matched if and to the extent that—
    - (a) it is in a matching relationship with another loan relationship or a derivative contract of the company, or
    - (b) exchange gains or losses arising in relation to an asset or liability representing the loan relationship are excluded from being brought into account under regulations under section 328(4),
 and “unmatched” is to be construed accordingly.
  - (3) A loan relationship is in a matching relationship with another loan relationship or derivative contract if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.
  - (4) In this section “economic risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.
  - (5) In this section “derivative contract” has the same meaning as in Part 7 (see section 576).”
- 11 (1) Section 694 (derivative contracts: exchange gains and losses) is amended as follows.
- (2) After subsection (3) insert—
 

“(3A) If the contract is to any extent matched, subsection (3) applies to leave out of account only the amount of the exchange gains or losses arising to the company in relation to the contract to the extent that the contract is unmatched (an amount which may be nil).”
  - (3) After subsection (7) insert—
 

“(7A) Subsections (5) to (7) apply only to the extent that the contract is unmatched.”
  - (4) After subsection (10) insert—
 

“(11) For the purposes of this section a derivative contract of a company is matched if and to the extent that—
 
    - (a) it is in a matching relationship with another derivative contract or loan relationship of the company, or
    - (b) exchange gains or losses arising in relation to the derivative contract are excluded from being brought into account under regulations under section 606(4)(b),
 and “unmatched” is to be construed accordingly.
  - (12) A derivative contract is in a matching relationship with another derivative contract or loan relationship if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.
  - (13) In this section “economic risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.

(14) In this section “loan relationship” has the same meaning as in Part 5 (see section 302).”

*Commencement*

- 12 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016.
- (2) For the purposes of sub-paragraph (1), where the accounting period of a company begins before 1 April 2016 and ends on or after that date (the “straddling period”), so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods.