SCHEDULES

SCHEDULE 20

TAXATION OF HYBRID CAPITAL INSTRUMENTS

PART 2

CORPORATION TAX, INCOME TAX AND CAPITAL GAINS TAX

Distributions in respect of hybrid capital instruments

2 At the end of Chapter 12 of Part 5 of CTA 2009 insert—

"Hybrid capital instruments

Amounts payable in respect of hybrid capital instruments

420A(1) This section applies if a loan relationship is a hybrid capital instrument for an accounting period of the debtor.

(2) The Corporation Tax Acts have effect in relation to any person in respect of times in the accounting period as if any qualifying amount payable in respect of the hybrid capital instrument were not a distribution.

(3) An amount is a "qualifying amount" so far as it would not be regarded as a distribution if it is assumed that any provision made by the loan relationship under which the debtor is entitled to defer or cancel a payment of interest under the loan relationship had not been made.

(4) This section also needs to be read together with section 1015(1A) of CTA 2010 (which prevents hybrid capital instruments from being "special securities" as a result of being equity notes)."

3 (1) After section 475B of CTA 2009 insert—

"Meaning of "hybrid capital instrument"

475C Meaning of "hybrid capital instrument"

(1) For the purposes of this Part, a loan relationship is a "hybrid capital instrument" for an accounting period of the debtor if—

(a) the loan relationship makes provision under which the debtor is entitled to defer or cancel a payment of interest under the loan relationship,

(b) the loan relationship has no other significant equity features, and

(c) the debtor has made an election in respect of the loan relationship which has effect for the period.

(2) For the purposes of this section a loan relationship "has no other significant equity features" if under the loan relationship—

(a) there are neither voting rights in the debtor (ignoring insignificant voting rights in the debtor) nor a right to exercise a dominant influence over the debtor,

(b) any provision for altering the amount of the debt is limited to write-down or conversion events in qualifying cases, and

(c) any provision for the creditor to receive anything other than interest or repayment of the debt is limited to conversion events in qualifying cases.

(3) For the purposes of subsection (2)(a)—

(a) the loan relationship makes provision for "insignificant voting rights in the debtor" if (and only if) the voting rights of any creditor under the loan relationship are limited to one vote exercisable in relation to matters generally affecting the debtor without conferring any special advantage or other right on the creditor, and

(b) "a right to exercise a dominant influence over the debtor" means a right to give directions with respect to the debtor's operating and financial policies with which it is obliged to comply (whether or not they are for the debtor's benefit).

(4) For the purposes of subsection (2)(b) a "write-down event" means—

(a) a permanent release of some or all of the debt, or

(b) a reduction in the amount of the debt (including to nil) in a case where provision is made for the reduction to be temporary (whether on the meeting of conditions or the exercise of a right or otherwise).

(5) For the purposes of subsection (2) a "conversion event" means—

(a) the conversion of the loan relationship into shares forming part of the debtor's ordinary share capital, or

(b) the conversion of the loan relationship into shares forming part of the ordinary share capital of **[**F1a company ("C") which, after the conversion, has control of the debtor or would have control of the debtor if C were taken to have all the rights and interests in the debtor of any company connected with C**]**.

F2…

(6) For the purposes of subsection (2), a loan relationship makes provision for a qualifying case if—

(a) the provision applies only in the event that there is a material risk of the debtor becoming unable to pay its debts as they fall due,

(b) the provision applies only in the event that the value of the debtor's assets is less than the amount of its liabilities, taking into account contingent and prospective liabilities, or

(c) the provision is included in the loan relationship solely because of a need to comply with a regulatory or other legal requirement,

and, in each case, the provision in question does not include a right exercisable by the creditor.

(7) Provision is not to be regarded as failing to meet the condition in subsection (2)(b) merely because, in the case of a write-down event mentioned in subsection (4)(b), it provides for a subsequent increase in the amount of the debt (but not above the original amount).

(8) An election under this section—

(a) is irrevocable,

[[F3](b) must be made before the end of the period of 6 months beginning with—

(i) the day on which the company becomes a party to the loan relationship, or

(ii) if (after becoming a party to the loan relationship) the loan relationship is amended so as to meet the conditions in subsection (1)(a) and (b), the first day of the company's next accounting period, and

(c) has effect for the accounting period in which the day mentioned in paragraph (b)(i) or (ii) falls and for subsequent accounting periods.**]**

(9) But an election under this section has no effect if—

(a) the company is a party to the loan relationship directly or indirectly in consequence of, or otherwise in connection with, any arrangements (within the meaning of section 455C(2)), and

(b) the main purpose of, or one of the main purposes of, the arrangements is to secure a tax advantage for the company or any other person."

(2) In a case where a company became a party to a loan relationship before 1 January 2019, section 475C(8)(b) of CTA 2009 has effect as if the election were required to be made on or before 30 September 2019.

Textual Amendments

F1 Words in Sch. 20 para. 3(1) substituted (retrospectively) by virtue of The Taxation of Hybrid Capital Instruments (Amendment of Section 475C of the Corporation Tax Act 2009) Regulations 2019 (S.I. 2019/1250, **regs. 1(2)**, **2(1)(a)**

F2 Words in Sch. 20 para. 3(1) omitted (retrospectively) by virtue of The Taxation of Hybrid Capital Instruments (Amendment of Section 475C of the Corporation Tax Act 2009) Regulations 2019 (S.I. 2019/1250, **regs. 1(2)**, **2(1)(b)**

F3 Words in Sch. 20 para. 3(1) substituted (retrospectively) by virtue of The Taxation of Hybrid Capital Instruments (Amendment of Section 475C of the Corporation Tax Act 2009) Regulations 2019 (S.I. 2019/1250, **regs. 1(2)**, **3**

4 In section 1015 of CTA 2010 (meaning of "special securities") after subsection (1) insert—

"(1A) But hybrid capital instruments (within the meaning of section 475C of CTA 2009) are not special securities by reason of meeting condition E."

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2019, Cross Heading: Distributions in respect of hybrid capital instruments.