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."

Loan relationships: credits and debits to be brought into account

5 After section 320A of CTA 2009 insert—

"**320B Hybrid capital instruments: amounts recognised in equity**

(1) This section applies if in accordance with generally accepted accounting practice, an amount in respect of a hybrid capital instrument relating to any of the matters in section 306A(1) of CTA 2009—

(a) is recognised in equity or shareholders' funds for a period, and

(b) is not recognised in the company's accounts for the period as an item of profit or loss or as an item of other comprehensive income.

(2) The amount is to be brought into account for the period for the purposes of this Part in the same way as an amount which is brought into account as a credit or debit in determining the company's profit or loss for the period in accordance with generally accepted accounting practice.

(3) But this section does not bring into account for the purposes of this Part any exchange gain or loss of the company which is recognised in the company's statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings."

Normal commercial loans

6 In section 162 of CTA 2010 (meaning of "normal commercial loan") after subsection (1) insert—

"(1B) For those purposes, "normal commercial loan" also includes a hybrid capital instrument (within the meaning of section 475C of CTA 2009)."

Consequential amendments

7 (1) Part 5 of CTA 2009 (loan relationships) is amended as follows.

(2) In section 398 (overview of Chapter 12), in subsection (2)—

(a) omit the "and" at the end of paragraph (d), and

(b) after paragraph (e) insert ", and

(f) section 420A (hybrid capital instruments)."

(3) In section 465(3) (provisions preventing amounts from being distributions), before paragraph (za) insert—

"(zza) section 420A(2) (hybrid capital instruments),".

8 (1) Part 10 of TIOPA 2010 (corporate interest restriction) is amended as follows.

(2) In section 413(6) (adjusted net group-interest expense: "relevant enactment") for paragraph (b) substitute—

"(b) section 320B of CTA 2009 (hybrid capital instruments: amounts recognised in equity)."

(3) In section 415 (qualifying net group-interest expense: interpretation), omit subsection (8).

9 (1) The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256) are amended in accordance with this paragraph.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of "fair value profit or loss" insert—

""hybrid capital instrument" has the meaning given by section 475C of CTA 2009;", and

(b) omit the definition of "regulatory capital security".

(3) In regulation 3 (exchange gains or losses arising from liabilities or assets hedging shares etc), in paragraph (5)(c), for "a regulatory capital security" substitute " a hybrid capital instrument ".

(4) In regulation 4 (exchange gains or losses arising from derivative contracts hedging shares etc), in paragraph (4A)(c), for "a regulatory capital security" substitute " a hybrid capital instrument ".

Commencement for purposes of corporation tax

10 The following have effect for accounting periods beginning on or after 1 January 2019—

(a) the provision made by paragraphs 1 to 4 and 6 so far as relating to corporation tax, and

(b) the amendments made by paragraphs 5 and 7 to 9.

11 An accounting period beginning before and ending on or after 1 January 2019 is to be treated for the purposes of the provision made by this Schedule (other than paragraph 12 or 13) as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

12 (1) This paragraph applies in the case of a security which was a regulatory capital security for the purposes of the Taxation of Regulatory Capital Securities Regulations 2013 immediately before 1 January 2019 (referred to in this Part of this Schedule as a "transitional qualifying instrument").

(2) The revocations made by paragraph 1 do not affect any case where regulation 3(2)(a) or (b), (3) or (3A) of those Regulations would have applied in relation to accounting periods ending on or before 31 December 2023 but for the provision made by paragraph 1.

(3) In a case where sub-paragraph (2) has applied, paragraph 13 makes provision for corporation tax purposes in relation to an accounting period beginning on 1 January 2024 ("the 2024 period") to bring in credits or debits in respect of a transitional qualifying instrument which exists immediately before that date so far as they would not otherwise be brought into account.

(4) For the purposes of this paragraph and paragraph 13, an accounting period beginning before and ending on or after 1 January 2024 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

13 (1) If there is a difference between—

(a) the tax-adjusted carrying value of a transitional qualifying instrument which is an asset or liability at the end of an accounting period ending on 31 December 2023, and

(b) the tax-adjusted carrying value of that instrument at the beginning of the 2024 period,

a credit or debit (as the case may be) of an amount equal to the difference must be brought into account for the purposes of Part 5 of CTA 2009 for the 2024 period in the same way as a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(2) For the purposes of this paragraph "tax-adjusted carrying value" is to be construed in accordance with—

(a) section 465B of CTA 2009 (tax-adjusted carrying value in relation to the asset or liability representing a loan relationship), and

(b) section 702 of CTA 2009 (tax-adjusted carrying value in relation to a contract).

(3) Where in the 2024 period, in accordance with generally accepted accounting practice, the rights and liabilities under the transitional qualifying instrument have been treated as divided between—

(a) a loan relationship, and

(b) one or more derivative financial instruments or equity instruments,

the reference in this paragraph to the tax-adjusted carrying value of the transitional qualifying instrument means the sum of the tax-adjusted carrying values for each of those component instruments.

(4) In sub-paragraph (3) "equity instrument" has the meaning it has for accounting purposes.

14 (1) This paragraph applies to a transitional qualifying instrument which qualified as a regulatory capital security as a result of falling within regulation 2(1)(c) or (d) of the Taxation of Regulatory Capital Securities Regulations 2013.

(2) The revocations made by paragraph 1 do not affect the application of regulation 3(2)(c)(i) of those Regulations in a case where the writing down or conversion concerned took place before 1 July 2019.

15 (1) This paragraph applies if—

(a) regulation 3(2)(c)(i) of the Taxation of Regulatory Capital Securities Regulations 2013 applied in relation to a transitional qualifying instrument as a result of the writing down of the principal amount of the security on a temporary basis, and

(b) a credit was, accordingly, not brought into account under Part 5 of CTA 2009.

(2) No debit is to be brought into account under that Part in respect of the writing up of the principal amount of the security in accordance with any regulatory requirements or the provisions governing the security.

Commencement for purposes of income tax and CGT

16 (1) The provision made by paragraphs 1 to 4 has effect for the purposes of income tax in relation to payments made on or after 1 January 2019.

(2) But the revocations made by paragraph 1—

(a) do not affect the application of regulation 6 or 9 of the Taxation of Regulatory Capital Securities Regulations 2013 in relation to payments made before the day on which this Act is passed, and

(b) do not, in the case of a transitional qualifying instrument, apply to payments made before 1 January 2024 in any case where regulation 6 or 9 of those Regulations would have applied but for the provision made by paragraph 1.

17 The revocations made by paragraph 1 have effect for the purposes of capital gains tax in relation to disposals made on or after 1 January 2019.

18 In so far as it relates to the definition of "corporate bond" in section 117(1) of TCGA 1992, the amendment made by paragraph 6 has effect in relation to disposals made on or after 1 January 2019.

Power to amend definition of "hybrid capital instrument"

19 (1) The Treasury may by regulations amend section 475C of CTA 2009.

(2) The power conferred by this paragraph may not be exercised after 31 December 2019.

(3) The regulations may contain incidental, supplementary, consequential and transitional provision and savings.

(4) The consequential provision that may be made by the regulations includes provision amending any provision made by or under any Act.

(5) The regulations may contain retrospective provision.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2019, PART 2.