

**1      Transfer pricing reform**

- (1) Schedule 1 makes provision about, and in connection with, transfer pricing.
- (2) Except as otherwise provided for in that Schedule, the amendments made by that Schedule have effect in relation to chargeable periods commencing on or after [commencement date].

## SCHEDULE 1

Section 1

### TRANSFER PRICING

#### PART 1

#### AMENDMENTS OF PART 4 OF TIOPA 2010

##### *Introduction*

- 1 Part 4 of TIOPA 2010 (transfer pricing) is amended as follows.

##### *Transfer pricing notice where participation condition not otherwise met*

- 2 (1) After section 148 insert –

**“148A Participation condition treated as met: transfer pricing notice**

- (1) Subsection (3) applies where –
- (a) the basic pre-condition would be met, if the participation condition in section 148 were met,
  - (b) as a result of the application of sections 157 to 161, the participation condition is not met, and
  - (c) either (ignoring those sections, which give particular meanings to the following words for the purposes of section 148) –
    - (i) one of the affected persons was directly or indirectly participating in the management, control or capital of the other, or
    - (ii) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.
- (2) Whether a person was directly or indirectly participating in the management, control or capital of another person is, for the purposes of subsection (1)(c), to be determined having regard to all of the circumstances.
- (3) The Commissioners for His Majesty's Revenue and Customs may give the potentially advantaged person a notice under this section.
- (4) The effect of the notice is that the participation condition is to be treated as met.
- (5) Where the Commissioners consider that a particular case is analogous to a case that would meet the participation condition only as a result of section 161 (actual provision relates, to any extent, to financing arrangements) –
- (a) the Commissioners must state that in the notice, and

- (b) subsections (1)(d), (2)(b), (3), (4)(b) and (5) of section 147 have effect in relation to that case as if reference to “the actual provision” were to the actual provision so far as relating to the financing arrangements concerned.
- (6) A notice under subsection (3) is referred to in Chapter 3 as a transfer pricing notice.
- (7) See sections 169 to 171 in that Chapter for further provision about the giving of, and effect of, transfer pricing notices.”
- (2) In section 157 (direct participation), in subsection (1)(a), after “Part” insert “(other than for the purposes of section 148A(1)(c))”.
- (3) In section 164(1)(a) (Part to be interpreted in accordance with OECD principles), after “148” insert “, 148A”.
- (4) In section 170 (appeals against transfer pricing notices) –
  - (a) in subsection (1), before paragraph (a) insert –
    - “(za) in the case of a transfer pricing notice given under section 148A(3), that the condition in section 148A(1)(c) is not met,”
  - (b) after subsection (1) insert –
    - “(1A) A person to whom a transfer pricing notice is given under section 148A(3) may appeal against a decision of the Commissioners for His Majesty's Revenue and Customs to consider the case to which the notice relates analogous to a case that would meet the participation condition only as a result of section 161 (actual provision relates, to any extent, to financing arrangements).”, and
  - (c) in subsection (2), for “Any such appeal” substitute “An appeal under this section”.

#### *Intangible fixed assets*

- 3 In section 151 (“arm’s length provision”), after subsection (2) insert –
  - “(3) For the purposes of determining the arm’s length provision in relation to actual provision involving –
    - (a) the transfer of intangible fixed assets, or
    - (b) the grant of a licence or any other right in respect of intangible fixed assets,assume that the transfer or grant at arm’s length would be for consideration of a sum of money.
  - (4) For the purposes of subsection (3) “intangible fixed assets” has the meaning it has in Part 8 of CTA 2009.”

### *Guarantees*

- 4 (1) Omit section 152.
- (2) Omit section 153.
- (3) Before section 154 insert—

**“153A Certain guarantees not capable of being arm’s length**

Where—

- (a) the actual provision includes provision for the borrowing of an amount,
  - (b) the amount would not have been lent between independent enterprises but for a guarantee, and
  - (c) such a guarantee was provided by a person with whom the borrower has a participatory relationship,
- provision for the guarantee (to the extent it relates to the borrowing of that amount) is never to be regarded as arm’s length provision for the purposes of this Part.”

- (4) After section 153A (as inserted by sub-paragraph (3)) insert—

**“153B Election for deemed guarantee**

- (1) This section applies where the actual provision includes provision for the borrowing of an amount.
- (2) A UK resident company with whom the borrower has a qualifying participatory relationship may elect to be treated, for the purposes of this Part (as it applies to the company and any other person), as having provided a guarantee in respect of so much of the borrowing as is excessive.
- (3) Borrowing is excessive to the extent that it—
  - (a) would not have been lent between independent enterprises but for a guarantee, and
  - (b) was not the subject of such a guarantee.
- (4) The election—
  - (a) must be made by being included (whether by amendment or otherwise) in the company's company tax return for the chargeable period in which the amount was borrowed, and
  - (b) is irrevocable.
- (5) Where the lender of the amount makes a claim under 174 in relation to the provision for the borrowing before the election made under this section, the election only applies to so much of the excessive borrowing as is not taken account of in the calculation of the lender’s profits and losses as a result of the claim.
- (6) For the purposes of this section—

- (a) a participatory relationship is “qualifying” if the participatory relationship does not arise only as a result of any of sections 148A (participation condition treated as met following transfer pricing notice) or 159 to 161 (indirect participation), and
  - (b) “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.
- (7) See also Chapter 5 for provision about claims by a guarantor (which includes a person making an election under subsection (2)).”
- (5) In section 154 (interpretation of sections 152 and 153) –
  - (a) in the heading, for “152 and 153” substitute “153A and 153B”,
  - (b) omit subsections (1) to (3),
  - (c) after subsection (4) insert –

“(4A) But any implicit support is not to be regarded as a guarantee.”,
  - (d) for subsection (5) substitute –

“(5) A person has a participatory relationship with another person at any time if provision relating to financing arrangements made or imposed between them at that time would meet the participation condition in section 148.”
  - (e) after subsection (5) insert –

“(5A) “Borrowing” includes the issuing of a security.

(5B) “Implicit support” means any incidental benefit, in relation to borrowing by a company, that it is reasonable to assume would arise to the company as a result of it having a participatory relationship with one or more other companies.”, and
  - (f) omit subsections (6) and (7).
- (6) In section 164(1)(a) (Part to be interpreted in accordance with OECD principles), after “148A” (as inserted by paragraph 2(3)) insert “, 154(5B)”.
- (7) In section 174 (claim by the affected person who is not potentially advantaged), in subsection (3), for “claim not allowed in some cases where actual provision relates to a security issued by one of the affected persons” substitute “application of section 174 where guarantee disallowed”.
- (8) For section 175 substitute –

**“175 Application of section 174 where guarantee disallowed**

  - (1) Subsection (2) applies where –
    - (a) the actual provision includes provision for the borrowing of an amount,

- (b) that amount would not have been lent between independent enterprises but for a guarantee,
  - (c) such a guarantee was provided by a person with whom the borrower has a participatory relationship, and
  - (d) the participation condition, in relation to the actual provision for the borrowing –
    - (i) would not be satisfied but for section 161 (indirect participation), or
    - (ii) is satisfied as a result of a notice given under section 148A(3), and the Commissioners for His Majesty's Revenue and Customs consider that the case is analogous to a case that would meet the participation condition only as a result of section 161.
- (2) For the purposes of section 174(2), the amount is to be treated as if it had been lent to the guarantor on equivalent terms to the terms on which it was lent to the borrower.
- (3) Section 154 (interpretation of section 153A and 153B) applies for the purposes of this section as it applies for the purposes of sections 153A and 153B.”
- (9) In consequence of the amendment made by sub-paragraph (8) –
  - (a) in section 158, in subsection (2), for “148(2)(a) and (3)(a) and 175(2)(a)” substitute “148(2) and (3) and 175”,
  - (b) in section 159, in subsection (1)(a), for “175(2)” substitute “175”, and
  - (c) in section 160, in subsection (1)(a), for “175(2)” substitute “175”.

*Position of guarantor of affected person's liabilities under a security issued by the person*

- 5 In the italic heading before section 191, for the words from “liabilities” to the end substitute “borrowing liabilities”.
- 6 (1) Section 191 (when sections 192 to 194 apply) is amended as follows.
  - (2) In subsection (1) –
    - (a) in paragraph (a) –
      - (i) for “issuing company” substitute “borrower”, and
      - (ii) for the words from “is” to the end substitute “ has borrowing liabilities”,
    - (b) in paragraph (c) –
      - (i) for “issuing company” substitute “borrower”, and
      - (ii) for “under the security” substitute “in respect of the borrowing”, and
    - (c) for paragraph (d) substitute –
      - “(d) the reduction is a result of provision for the guarantee not being regarded as arm’s length in accordance

with section 153A (certain guarantees not capable of being arm's length)."

- (3) Omit subsections (2) to (4).
  - (4) In subsection (5) –
    - (a) in the definition of "the issuing company", for "issuing company" substitute "borrower",
    - (b) omit the definition of "the security", and
    - (c) at the appropriate places insert –
      - ""borrowing", "guarantee" and "implicit support" have the meanings they have in sections 153A and 153B (see section 154);
      - ""the borrowing transaction" means the transaction mentioned in subsection (1)(a);""
- 7 (1) Section 192 is amended as follows.
- (2) In the heading, for "issuing company" substitute "borrower".
  - (3) In subsection (1) –
    - (a) in the words before paragraph (a) –
      - (i) for "section 191(1)(c)" substitute "subsection (1)(c) of section 191 (so far as it meets the condition in subsection (1)(d) of that section)", and
      - (ii) for "issuing company" substitute "borrower".
    - (b) omit paragraph (a),
    - (c) for paragraph (b) substitute –
      - “(b) was the person that owed the borrowing liabilities under the borrowing transaction, and”, and
    - (d) in paragraph (c), for "issuing company" substitute "borrower".
  - (4) In subsection (3) for "issuing company's liabilities under the security" substitute "borrower's liabilities under the borrowing transaction".
  - (5) Omit subsection (6).
- 8 In section 192A (provision for cases within Part 6A), in subsection (1) –
- (a) in paragraph (a), for "issuing company under the security" substitute "borrower in respect of the borrowing transaction", and
  - (b) in paragraph (d), for "issuing company" substitute "borrower".
- 9 In section 193 (interaction between claims under sections 184 and 192(1)) –
- (a) in subsection (1) –
    - (i) in paragraph (a), for "issuing company" substitute "borrower",
    - (ii) for paragraph (b) substitute –
      - “(b) another person ("the lender")", and

- (iii) in the words after paragraph (b), for “security” substitute “borrowing transaction”,
  - (b) in subsection (2) in paragraph (b), for “lending company” substitute “lender”,
  - (c) in subsection (3) for “lending company’s” substitute “lender’s”, and
  - (d) in subsection (4) –
    - (i) in paragraph (a), for “lending company” substitute “lender”, and
    - (ii) in paragraph (b), for “lending company’s” substitute “lender’s”.
- 10 (1) Section 194 (claims under section 192(1)) is amended as follows.
  - (2) In subsection (1), in paragraph (c), for “issuing company” substitute “borrower”.
  - (3) In subsection (2) for “issuing company” substitute “borrower”.
  - (4) In subsection (3), in paragraph (a), for “issuing company” substitute “borrower”.

*Other references to securities*

- 11 (1) In the italic heading before section 181, for “a security” substitute “borrowing”.
- (2) In section 181 (section 182 claims) –
  - (a) in the heading, for “a security” substitute “borrowing”,
  - (b) in subsection (1) –
    - (i) omit paragraph (a), and
    - (ii) in paragraph (b), for “a security issued by one of those companies” substitute “borrowing”, and
  - (c) for subsection (4) and (5) substitute –
    - “(4) For the purposes of this section “borrowing” has the meaning it has in sections 153A and 153B (see section 154).”
- (3) In section 197 (qualifying conditions for purposes of section 198) –
  - (a) in subsection (2) –
    - (i) omit “(“the issuing company”) is a company that”, and
    - (ii) for “liabilities under a security issued by it” substitute “borrowing liabilities”,
  - (b) in subsection (4) –
    - (i) for “issuing company” substitute “borrower”, and
    - (ii) for “under the security” substitute “in respect of the borrowing”,
  - (c) in subsection (5), for “153” substitute “section 153A”,
  - (d) in subsection (6) for “issuing company” substitute “borrower”,
  - (e) in subsection (7)(a), for “153” substitute “section 153A”, and



- (f) for subsections (8) to (10) substitute –
  - “(8) For the purposes of this Chapter, “borrowing” and “guarantee” have the meanings they have in sections 153A and 153B (see section 154).”
- (4) In section 198 (balancing payments by guarantor to issuer: no charge to, or relief from, tax) –
  - (a) in the heading, for “issuer” substitute “borrower”,
  - (b) in subsection (1) –
    - (i) for “guarantor companies” substitute “guarantors”, and
    - (ii) after “197(4)” insert “that are result of the application of section 153A,
  - (c) in subsection (2)(a) –
    - (i) for “the purposes of corporation tax” substitute “tax purposes”, and
    - (ii) for “issuing company” substitute “borrower”,
  - (d) in subsection (2)(b) omit “Corporation”,
  - (e) in subsection (3) omit the definition of “the issuing company”.
- (5) In section 199 (pre-conditions for making election under section 200) –
  - (a) in subsection (5), for “a security (the “relevant security”)” substitute “borrowing (“the relevant borrowing”)", and
  - (b) omit subsections (7) and (8).
- (6) In section 200 (election to pay tax rather than make balancing payments) –
  - (a) in subsection (1) –
    - (i) for “section 152”, in both places it occurs, substitute “section 153A”, and
    - (ii) for “security”, in both places it occurs, substitute “borrowing”, and
  - (b) in subsection (3), for “security” substitute “borrowing”.
- (7) In section 201 (pre-conditions for making election under section 202) –
  - (a) in subsection (5)(a) –
    - (i) for “the issuing of a security (“the relevant security”)" substitute “borrowing (“the relevant borrowing”)",
    - (ii) omit “(“the issuing company”)",
  - (b) omit subsections (7) to (9).
- (8) In section 202 (election, in guarantee case, to pay tax rather than make balancing payments) –
  - (a) in subsection (1) –
    - (i) for “section 153”, in both places it occurs, substitute “section 153A”, and
    - (ii) for “security”, in both places it occurs, substitute “borrowing”, and

- (b) in subsection (3), for “security” substitute “borrowing”.
- (9) In section 203 (elections under section 200 or 202—
  - (a) in subsection (2) for “security is issued” substitute “borrowing first occurs”,
  - (b) in subsection (4), for “security is issued” substitute “borrowing first occurs”,
  - (c) in subsection (8) for “security” substitute “borrowing”, and
  - (d) in subsection (9)—
    - (i) for “security was issued” substitute “borrowing first occurred”,
    - (ii) for “been issued” substitute “first borrowed”.

*Commencement of paragraphs 4 to 11*

- 12 The amendments made by paragraphs 4 to 11 have effect—
  - (a) in relation to chargeable periods ending on or after the day on which this Act is passed but that commence before [longstop date], in relation to borrowing occurring on, or after, the day on which this Act is passed, and
  - (b) in relation to chargeable periods commencing on or after [longstop date] (for all purposes).

*Financing cases*

- 13 (1) For section 161 substitute—

**“161 Indirect participation: involvement in financing arrangements**

- (1) Subsection (3) applies at any time if—
  - (a) a person (“P”) has a qualifying interest in another person (“A”),
  - (b) A is a body corporate or firm,
  - (c) P is party to financing arrangements for A to which P and one or more other persons with a qualifying interest in A are party, and
  - (d) one or more of those other persons act together with P in relation to A, or have acted together in relation to A within the previous 6 months, and
  - (e) if all of the rights and powers of P and each of the persons mentioned in paragraph (d) were held by one person (“H”), that person would be taken to have control of A.
- (2) In determining whether H would be taken to have control of A, the rights and powers of any person (and not just H) are to be taken to include those that would be attributed to that person by section 159(2) were it being decided under section 159(2) whether that

person is indirectly participating in the management, control or capital of A.

- (3) At any time this subsection applies, P is to be regarded, for the purposes of sections 148(2) and (3) and 175, as indirectly participating in the management, control or capital of A.
- (4) A person (“Q”) with a qualifying interest in another person (“B”), and another person (“U”) with such an interest, are to be regarded as acting together in relation to B if at any time while they both hold such an interest –
  - (a) Q and U are connected,
  - (b) for the purposes of influencing the conduct of B’s affairs –
    - (i) Q is able to secure that U acts in accordance with Q’s wishes,
    - (ii) U can reasonably be expected to act, or typically acts, in accordance with Q’s wishes,
    - (iii) U is able to secure that Q acts in accordance with U’s wishes, or
    - (iv) Q can reasonably be expected to act, or typically acts, in accordance with U’s wishes, or
  - (c) Q and U are party to any financing arrangements for B to which Q and U are party that –
    - (i) it is reasonable to suppose is designed to affect the value of any of U’s or Q’s rights or interests in relation to B, or
    - (ii) relates to the exercise of any of U’s or Q’s rights in relation to B.
- (5) A person (“P”) has a qualifying interest in a company (“C”) if it is reasonable to suppose that –
  - (a) P possesses or is entitled to acquire any amount of the share capital or issued share capital of C,
  - (b) P possesses or is entitled to acquire any amount of the voting power in C, or
  - (c) if the whole of C’s share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) any amount of the proceeds of the disposal.
- (6) A person (“P”) has an qualifying interest in a firm (“Q”) if it is reasonable to suppose that –
  - (a) if the whole of the income of the firm were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) any amount of the distributed amount, or
  - (b) in the event of a winding-up of the firm or in any other circumstances, P would receive (directly or indirectly and

whether or not at the time of the winding-up or other circumstances or later) any amount of Q's assets which would then be available for distribution.

(7) In this section –

“arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable);

“financing arrangements” means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.”

(2) Omit section 162.

(3) In section 158 (indirect participation defined by sections 159 to 162) –

(a) in the heading, for “162” substitute “161”, and

(b) omit subsection (3).

(4) In section 163 (meaning of “connected”) –

(a) in the heading, for “section 159” substitute “sections 159 and 161”, and

(b) in subsection (1), for “section 159” substitute “sections 159 and 161”.

*Agreements for common management etc*

14 (1) Before section 163 insert –

**“162A Agreements for common management**

(1) Where a person (“A”) and another person (“B”) are the subject of an arrangement for the purpose of securing that the management of each is effected by the same person or group of persons, each of A and B is to be treated, for the purposes of this Chapter, as having control of the other.

(2) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).”

(2) In section 157 (direct participation), after subsection (2) insert –

“(3) See also section 162A, which provides for circumstance in which a person will be regarded as having control of another.”

*Participation condition: anti avoidance*

15 After section 162A (as inserted by paragraph 14) insert –

**“162B Arrangements to avoid participation condition**

(1) Any arrangements that would result in the participation condition not being met are to be disregarded if the main purpose, or one of

the main purposes, of the arrangements is to secure that the participation condition is not met.

- (2) In this section “arrangement” means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).”

*UK to UK exemption*

- 16 (1) Before section 165 (at the beginning of Chapter 3) insert—

**“164A Exemption for qualifying provision between UK resident companies**

- (1) Section 147(3) and (5) do not apply in calculating, for a chargeable period of a potentially advantaged person, the profits and losses of that person in relation to actual provision that is qualifying UK to UK provision in relation to that person for that period.
- (2) Actual provision is qualifying UK to UK provision in relation to a potentially advantaged person for a chargeable period of that person (“the relevant period”) if—
- (a) the potentially advantaged person and the other affected person (whether or not also a potentially advantaged person) are both companies and are UK resident throughout the relevant period,
  - (b) they are both within the charge to corporation tax in respect of all profits arising from the relevant activities throughout the relevant period,
  - (c) each company is charged to corporation tax on such profits at the same rate as the other company is charged on such profits,
  - (d) there is no time in the relevant period at which the reference currency used by one company in relation to the provision or a part of the provision differs from the reference currency used by the other in relation to the provision or that part,
  - (e) neither section 415 nor 585 of CTA 2009 (loan relationships with embedded derivatives) apply to any part of the actual provision (whether applying in relation to one or both of the affected persons),
  - (f) the actual provision does not comprise or include, a contract to which section 589 of CTA 2009 (contracts not derivative contracts because of underlying subject matter) applies in relation to one or other of the affected persons (but not both),
  - (g) no exemption adjustments under section 18A(1) of CTA 2009 (exemption for profits or losses of foreign permanent establishments) are made in respect of profits or losses arising from the relevant activities of the potentially advantaged

- person or the other affected person in calculating the taxable profits of that person,
- (h) the actual provision is not patent box provision in relation to the relevant period, and
  - (i) neither the potentially advantaged person nor the other affected person is an excluded company at any time in the relevant period.
- (3) For the purposes of subsection (2)(d) the “reference currency” used by a company in relation to provision, or part of a provision, means the currency by reference to which the profits of the company, so far as they relate to the provision or part, are calculated for corporation tax purposes.
- (4) Actual provision is patent box provision in relation to the relevant period if—
- (a) it results in at least one of the affected persons having relevant IP income (within the meaning of Part 8A of CTA 2010) for an accounting period of that person falling (wholly or partially) within the relevant period, and
  - (b) an election under section 357A of that Act applies to that company for that accounting period.
- (5) A company is an excluded company at any time if—
- (a) it carries on a ring fence trade (within the meaning of Part 8 of CTA 2010) at that time,
  - (b) it carries on carrying on basic life assurance and general annuity business (within the meaning of Part 2 of FA 2012) at that time,
  - (c) it is a tonnage tax company (within the meaning of Schedule 22 to FA 2000) at that time,
  - (d) it is a banking company (within the meaning of Part 7A of CTA 2010) in relation to the accounting period of the company in which that time falls,
  - (e) it is, at that time, a company incorporated in the United Kingdom to which section 236 of FISMA 2000 applies (open-ended investment companies),
  - (f) it is a unit trust scheme in respect of which an order under section 243 of FISMA 2000 (authorised unit trust schemes) is in force at that time (see also section 617 of CTA 2010 which treats the trustees of such a scheme as a UK resident company for the purposes of the Tax Acts),
  - (g) it is an investment trust with respect to the accounting period of the company in which that time falls,
  - (h) it is, or is a member of, a UK REIT (within the meaning of Part 12 of CTA 2010) at that time,

- (i) section 83(1) of FA 2005 (application of accounting standards to securitisation companies) applies to the company in relation to a period of account in which that time falls,
  - (j) it is, at that time, a securitisation company within the meaning of the Taxation of Securitisation Companies Regulations 2006 to which those regulations apply,
  - (k) it is, at that time, an insurance securitisation company within the meaning of the Taxation of Insurance Securitisation Companies Regulations 2007,
  - (l) it is, at that time, a qualifying transformer vehicle within the meaning of the Risk Transformation (Tax) Regulations 2017 (see regulation 3),
  - (m) it is a QAHC (within the meaning of Schedule 2 to FA 2022) at that time,
  - (n) it is, or is a member of, a generating undertaking (within the meaning of Part 5 of F(No.2)A 2023) to whom generation receipts or allowable costs are attributed, in accordance with that Part, for the qualifying period in which that time falls, or
  - (o) it is a residential property developer (within the meaning of Part 2 of FA 2022) that has residential property developer profits (within the meaning of that Part) for the accounting period of the company in which that time falls.
- (6) Subsection (1) does not apply to qualifying UK to UK provision in relation to a potentially advantaged person for a chargeable period of that person if the person elects –
  - (a) that subsection (1) does not apply (in relation to the person) in respect of that provision, or
  - (b) that subsection (1) does not apply to the person for that period.
- (7) An election under subsection (6) may not be revoked.
- (8) Subsection (1) also does not apply to qualifying UK to UK provision in relation to a potentially advantaged person for a chargeable period of that person if the Commissioners for His Majesty's Revenue and Customs give the person a notice that states –
  - (a) that subsection (1) does not apply (in relation to the person) in respect of that provision for that period, or
  - (b) that subsection (1) does not apply to the person for that period.
- (9) But the a notice under subsection (8) is to be withdrawn, and is to be treated as if it had never been given, if the recipient of the notice can show on appeal (see section 170(1)(zb)) that no loss of tax would result from the application of subsection (1).

- (10) A notice under subsection (8) is referred to in this Chapter as a transfer pricing notice.
- (11) See sections 169 to 171 for further provision about the giving of, and effect of, transfer pricing notices.”
- (2) In section 170 (appeals against transfer pricing notices) in subsection (1), after paragraph (za) (as inserted by paragraph 2(4)(a) of this Schedule) insert—
  - “(zb) in the case of a transfer pricing notice given under section 164A(8), that there would be no loss of tax resulting from—
    - (i) in the case of a notice under section 164A(8)(a), the application of section 164A(1) in relation to the chargeable period and provision to which the notice relates, or
    - (ii) in the case of a notice under section 164A(8)(b), the application of section 164A(1) in relation to that period and any qualifying UK to UK provision for which the person is the potentially advantaged person.”
- (3) In consequence of the amendment made by sub-paragraph (1), in section 371SD (CFC corporation tax assumptions as to residence), after subsection (5) insert—
  - “(5A) The assumption in subsection (1) is to be ignored for the purposes of applying section 164A (and accordingly the CFC will not get the benefit of the transfer pricing exemption for qualifying provision between UK resident companies).”

#### *Losses*

- 17 In section 156 (“losses”), in subsection (1), in the words before paragraph (a) after “with” insert “the Tax Acts including (for example)”.

#### *Interpretation in accordance with OECD principles*

- 18 In Section 164 (part to be interpreted in accordance with OECD principles), in subsection (1), for paragraph (b) substitute—
  - “(b) the effect that would be given under double taxation arrangements that incorporate the OECD model in accordance with the transfer pricing guidelines.”

#### *Removal of requirement for Commissioners’ sanction*

- 19 (1) Omit sections 208 to 211 and the italic heading before section 208 (determinations requiring Commissioners’ sanction).



- (2) The amendment made by this paragraph has effect in relation to any transfer-pricing determination made on or after the day on which this Act comes into force.

## PART 2

### OTHER AMENDMENTS

#### CHAPTER 1

##### LOAN RELATIONSHIPS ETC

*Loan relationships where provision falls within Part 4 of TIOPA 2010*

- 20 (1) Section 445 of CTA 2009 (disapplication of independent terms assumption) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) Section 444 does not apply in relation to credits or debits of a company if –
- (a) as a result of Part 4 of TIOPA 2010 (transfer pricing), the profits and losses of the company are to be calculated for tax purposes as if the arm's length provision to which those credits or debits would relate had been made or imposed instead of the actual provision to which they relate, or
  - (b) those profits would be so calculated if the actual provision –
    - (i) conferred a potential advantage in relation to United Kingdom taxation (within the meaning of that Part) on the company, and
    - (ii) differed from the arm's length provision.”
- (3) Omit subsections (3) and (3A).

*Disallowed debits allowed where corresponding credit previously taken into account*

- 21 (1) In section 446 of CTA 2009 (bringing into account adjustments made under Part 4 of TIOPA 2010: loan relationships), for subsection (8) substitute –
- “(8) A qualifying credit which (ignoring this subsection) would be brought into account for the purposes of this Part is not to be brought into account.
- (9) But subsection (8) –
- (a) does not apply if the corresponding profits of the company that relate to the qualifying credit are less than the corresponding arm's length profits, and
  - (b) only applies to a qualifying credit to the extent that not bringing it into account would not have that result.

- (10) A credit of a company is a “qualifying credit” to the extent it corresponds to an amount which, as a result of Part 4 of TIOPA 2010, has not previously been brought into account as a debit.
- (11) Neither subsection (3) nor (5) of section 147 of TIOPA 2010 applies to prevent the bringing into account of a qualifying debit which (ignoring this subsection) would not be brought in account for the purposes of this Part as a result of the application of either subsection.
- (12) But subsection (11) –
  - (a) does not apply if the corresponding profits of the company are less than the corresponding arm’s length profits, and
  - (b) only applies to a qualifying debit to the extent that bringing it into account would not have that result.
- (13) A debit of a company is a “qualifying debit” to the extent it corresponds to a matched credit.
- (14) The relevant amount of a credit of a company is a “matched credit” if –
  - (a) the credit was previously brought into account,
  - (b) the credit relates to actual provision made or imposed between the company and another person to which neither subsection (3) or (5) of section 147 of that Act applied in relation to the company,
  - (c) the only reason neither subsection applied in relation to the company and the actual provision was because the actual provision did not confer a potential advantage on the company (see section 155 of that Act), and
  - (d) if the profits of the company were calculated as if the arm's length provision had been made or imposed instead of the actual provision, the credit would not have been brought into account to some extent.
- (15) The “relevant amount” of a credit means so much of the credit as would not have been brought into account if the arm's length provision had been made or imposed instead of the actual provision to which the credit relates.
- (16) For the purposes of subsections (9) and (12), the corresponding profits of the company means the sum of the profits and losses of the company –
  - (a) for each accounting period for which there was actual provision made or imposed between the company and another person to which the qualifying credit or qualifying debit relates,
  - (b) that arose from –

- (i) each such provision where the profits and losses of the company were not (as a result of Part 4 of TIOPA 2010) required to be calculated as if the arm's length provision had been made or imposed instead of that provision, and
    - (ii) the arm's length provision in relation to each such provision where the profits and losses of the company are to be calculated as if that arm's length provision had been made or imposed instead (as a result of that Part), and
  - (c) ignoring the effect (if any) of Part 10 of TIOPA 2010 (corporate interest restriction).
- (17) For the purposes of those subsections, the corresponding arm's length profits means the corresponding profits calculated as if the arm's length provision had been made or imposed instead of the actual provision referred to in subsection (16)(a) in each case.
- (18) In this section "actual provision", "arm's length provision" and "potential advantage" are to be construed in accordance with Part 4 of TIOPA 2010 (transfer pricing)."
- (2) In section 693 of CTA 2009 (bringing into account adjustments made under Part 4 of TIOPA 2010: derivative contracts), for subsection (6) substitute—
- “(6) A qualifying credit which (ignoring this subsection) would be brought into account for the purposes of this Part is not to be brought into account.
- (7) But subsection (6)—
- (a) does not apply if the corresponding profits of the company that relate to the qualifying credit are less than the corresponding arm's length profits, and
  - (b) only applies to a qualifying credit to the extent that not bringing it into account would not have that result.
- (8) A credit of a company is a “qualifying credit” to the extent it corresponds to an amount which, as a result of Part 4 of TIOPA 2010, has not previously been brought into account as a debit.
- (9) Neither subsection (3) nor (5) of section 147 of TIOPA 2010 applies to prevent the bringing into account of a qualifying debit which (ignoring this subsection) would not be brought in account for the purposes of this Part as a result of the application of either subsection.
- (10) But subsection (9)—
- (a) does not apply if the corresponding profits of the company are less than the corresponding arm's length profits, and

- (b) only applies to a qualifying debit to the extent that bringing it into account would not have that result.
- (11) A debit of a company is a “qualifying debit” to the extent it corresponds to a matched credit.
- (12) The relevant amount of a credit of a company is a “matched credit” if—
  - (a) the credit was previously brought into account,
  - (b) the credit relates to actual provision made or imposed between the company and another person to which neither subsection (3) or (5) of section 147 of that Act applied in relation to the company,
  - (c) the only reason neither subsection applied in relation to the company and the actual provision was because the actual provision did not confer a potential advantage on the company (see section 155 of that Act), and
  - (d) if the profits of the company were calculated as if the arm's length provision had been made or imposed instead of the actual provision, the credit would not have been brought into account to some extent.
- (13) The “relevant amount” of a credit means so much of the credit as would not have been brought into account if the arm's length provision had been made or imposed instead of the actual provision to which the credit relates.
- (14) For the purposes of subsections (7) and (10), the corresponding profits of the company means the sum of the profits and losses of the company—
  - (a) for each accounting period for which there was actual provision made or imposed between the company and another person to which the qualifying credit or qualifying debit relates,
  - (b) that arose from—
    - (i) each such provision where the profits and losses of the company were not (as a result of Part 4 of TIOPA 2010) required to be calculated as if the arm's length provision had been made or imposed instead of that provision, and
    - (ii) the arm's length provision in relation to each such provision where the profits and losses of the company are to be calculated as if that arm's length provision had been made or imposed instead (as a result of that Part), and
  - (c) ignoring the effect (if any) of Part 10 of TIOPA 2010 (corporate interest restriction).

- (15) For the purposes of those subsections, the corresponding arm's length profits means the corresponding profits calculated as if the arm's length provision had been made or imposed instead of the actual provision referred to in subsection (14)(a) in each case.
- (16) In this section "actual provision", "arm's length provision" and "potential advantage" are to be construed in accordance with Part 4 of TIOPA 2010 (transfer pricing)."

## CHAPTER 2

### INTANGIBLE FIXED ASSETS

#### *Proceeds of realisation*

- 22 (1) Section 739 (meaning of "proceeds of realisation") of CTA 2009 is amended as follows.
- (2) After subsection (1A) insert—
  - "(1B) Subsection (1A) does not apply to a realisation by a company if—
    - (a) either—
      - (i) as a result of Part 4 of TIOPA 2010 (transfer pricing), the profits and losses of the company are to be calculated for tax purposes as if the arm's length provision in relation to the realisation had been made or imposed instead of the actual provision in relation to it, or
      - (ii) those profits would be so calculated if the actual provision conferred a potential advantage in relation to United Kingdom taxation (within the meaning of that Part) on the company and differed from the arm's length provision, and
    - (b) the realisation is a deemed cross-border realisation.See also section 151(3) of that Part for provision about applying the arm's length provision in relation to intangible fixed assets."
- (3) After subsection (2) insert—
  - "(3) But where subsection (1A) applies in relation to an amount recognised for accounting purposes, that amount is not to be adjusted as a result of any adjustment required by Part 4 of TIOPA 2010.
- (4) For the purposes of subsection (1B)—
  - (a) a realisation is a deemed cross-border realisation if, at the time of the realisation, the other party to the realisation transaction is—

- (i) a UK resident company, but only if it has a qualifying permanent establishment in a territory outside the United Kingdom,
- (ii) a non-resident company, other than a non-resident company that has a permanent establishment in the United Kingdom with a relevant connection to the transaction, or
- (iii) a non-UK resident individual, other than an individual that carries on a trade, profession or vocation in the United Kingdom through a branch or agency where the transaction is for the purposes of that trade profession or vocation,
- (b) where the other party has a permanent establishment in a territory outside the United Kingdom, that permanent establishment is “qualifying” if—
  - (i) exemption adjustments under section 18A(1) of CTA 2009 (exemption for profits or losses of foreign permanent establishments) would be made in calculating the taxable profits of the other party, and
  - (ii) those adjustments would include adjustments in respect of the realisation transaction,
- (c) a permanent establishment of the other party in the United Kingdom has a relevant connection to the realisation transaction if the transaction is, in accordance with Chapter 4 of Part 2, attributable to that permanent establishment,
- (d) “branch or agency”—
  - (i) means any factorship, agency, receivership, branch or management, but
  - (ii) does not include any person within any of the exemptions under sections 835G to 835K of ITA 2007 (persons who are not UK representatives).
- (e) “actual provision” and “arm’s length provision” are to be construed in accordance with Part 4 of TIOPA 2010 (transfer pricing).”

*Transfers of intangible fixed assets*

- 23 (1) Section 845 of CTA 2009 (transfer between company and related party treated as at market value) is amended as follows.
- (2) In subsection (4) omit paragraph (a).
- (3) After that subsection insert—
- “(4ZA) But the basic rule does not apply in relation to a transfer if—
- (a) the transfer is a deemed cross-border transfer, and
  - (b) the transfer is subject to transfer pricing.

- (4ZB) See also section 846 for a different rule where—
- (a) the basic rule doesn't apply as a result of subsection (4ZA), and
  - (b) the profits and losses of the company or the related person are not required, under Part 4 of TIOPA 2010, to be calculated as if the arm's length provision had been made instead of the provision that the transfer is a result of.
- (4ZC) Where, as result of that section or Part 4 of TIOPA 2010, the profits and losses of the company or the related person are to be calculated as if the arm's length provision had been made instead of actual provision for the transfer, the transfer is treated for all purposes of the Taxes Acts as being for the price it would have under that arm's length provision (as respects both the company and the related party).
- (4ZD) For the purposes of subsection (4ZA)(a) a transfer is a deemed cross-border transfer if, at the time of the transfer, the related party is—
- (a) a UK resident company, but only if it has a qualifying permanent establishment in a territory outside the United Kingdom,
  - (b) a non-resident company, other than a non-resident company that has a permanent establishment in the United Kingdom with a relevant connection to the transferred asset, or
  - (c) a non-UK resident individual, other than an individual that carries on a trade, profession or vocation in the United Kingdom through a branch or agency that has a relevant connection to the transferred asset.
- (4ZE) Where the related party has a permanent establishment in a territory outside the United Kingdom, that permanent establishment is “qualifying” if—
- (a) exemption adjustments under section 18A(1) of CTA 2009 (exemption for profits or losses of foreign permanent establishments) would be made in calculating the taxable profits of the related party, and
  - (b) those adjustments include adjustments in respect of the transferred asset.
- (4ZF) A permanent establishment of the related party in the United Kingdom has a relevant connection to the transferred asset if the asset is, in accordance with Chapter 4 of Part 2, attributable to that permanent establishment.
- (4ZG) A branch or agency of the related party has a relevant connection to the transferred asset if—

- (a) where the related party is the transferor, it was used or held for the purposes of the branch or agency immediately before the transfer, or
  - (b) where the related party is the transferee, it was acquired for use by, to be held by or for the purposes of, the branch or agency.”
- (4) After subsection (5) insert –
  - “(6) In this section “branch or agency” –
    - (a) means any factorship, agency, receivership, branch or management, but
    - (b) does not include any person within any of the exemptions under sections 835G to 835K of ITA 2007 (persons who are not UK representatives).
  - (7) For the purposes of this section and section 846 –
    - “provision” and “arm’s length provision” are to be construed in accordance with Part 4 of TIOPA 2010 (transfer pricing);
    - a transfer is “subject to transfer pricing” if –
      - (a) as a result of Part 4 of TIOPA 2010 (transfer pricing), the profits and losses of the company or the related party are to be calculated for tax purposes as if the arm's length provision to which those credits or debits would relate had been made or imposed instead of the actual provision to which they relate, or
      - (b) those profits would be so calculated if the actual provision –
        - (i) conferred a potential advantage in relation to United Kingdom taxation (within the meaning of that Part) on the company, and
        - (ii) differed from the arm’s length provision.”
  - (5) For section 846 of CTA 2009 substitute –
 

**“846 Transfers where provision subject to transfer pricing but section 147(3) or (5) does not apply**

    - (1) This section applies to a person who is a company or related party to whom, or from whom, a transfer of an intangible fixed asset is made if –
      - (a) the basic rule in section 845 would apply in relation to that person and that transfer but does not as a result of subsection (4ZA) of that section (provision subject to transfer pricing), and
      - (b) the profits and losses of that person are not required, under section 147(3) or (5) of TIOPA 2010, to be calculated as if the arm’s length provision had been made instead of the provision that the transfer is a result of.



- (2) Section 147(3) of that Act applies to that person in relation to the provision the transfer is a result of as if—
  - (a) the reference to the “potentially advantaged person” were to that person, and
  - (b) the reference to the “actual provision” were to the provision the transfer is a result of.

See also section 151(3) of that Act for provision about applying the arm’s length provision in relation to intangible fixed assets.”

*Grant of licence or other right treated as at market value*

- 24 (1) Section 849AB of CTA 2009 (transfer between company and related party treated as at market value) is amended as follows.

- (2) After subsection (1) insert—

“(1A) But this section does not apply in relation to a person (either the company or the related party) if—

- (a) either—
  - (i) the profits and losses of the person are to be calculated for tax purposes as if the arm's length provision in relation to the grant had been made or imposed instead of the actual provision in relation to the grant as a result of Part 4 of TIOPA 2010 (transfer pricing), or
  - (ii) they would be so calculated if they conferred a potential advantage in relation to United Kingdom taxation (within the meaning of that Part) on the person differed from the arm’s length provision, and
- (b) the grant is a deemed cross-border grant.

- (1B) A grant is a deemed cross-border grant if, at the time of the grant, the related party is—

- (a) a UK resident company, but only if it has a qualifying permanent establishment in a territory outside the United Kingdom,
- (b) a non-resident company, other than a non-resident company that has a permanent establishment in the United Kingdom with a relevant connection to the licence or other right that is the subject of the grant, or
- (c) a non-UK resident individual, other than an individual that carries on a trade, profession or vocation in the United Kingdom through a branch or agency that has a relevant connection to the licence or other right that is the subject of the grant.

- (1C) Where the related party has a permanent establishment in a territory outside the United Kingdom, that permanent establishment is “qualifying” if –
  - (a) exemption adjustments under section 18A(1) of CTA 2009 (exemption for profits or losses of foreign permanent establishments) would be made in calculating the taxable profits of the related party, and
  - (b) those adjustments would include adjustments in respect of the licence or other right that is the subject of the grant.
- (1D) A permanent establishment of the related party in the United Kingdom has a relevant connection to the licence or other right that is the subject of the grant if the licence or other right is, in accordance with Chapter 4 of Part 2, attributable to that permanent establishment.
- (1E) A branch or agency of the related party has a relevant connection to the licence or other right that is the subject of the grant if –
  - (a) where the related party is the grantor, if the asset from which the licence or other right is derived was used or held for the purposes of the branch or agency immediately before the grant, or
  - (b) where the related party is the grantee, the licence or other right was acquired for use by, to be held by or for the purposes of, the branch or agency.
- (1F) In this section “branch or agency” –
  - (a) means any factorship, agency, receivership, branch or management, but
  - (b) does not include any person within any of the exemptions under sections 835G to 835K of ITA 2007 (persons who are not UK representatives).”
- (3) In subsection (6) omit paragraph (a).
- (4) In subsection (12), at the appropriate place insert –
 

““actual provision” and “arm’s length provision” are to be construed in accordance with Part 4 of TIOPA 2010 (transfer pricing),”
- (5) Omit section 849AC of CTA 2009.

*Deemed market value acquisition: adjustment where nil accounting value*

- 25 (1) Section 857 of CTA 2009 (deemed market value acquisition: adjustment where nil accounting value) is amended as follows.
- (2) In the heading –
  - (a) after “value”, in the first place it occurs, insert “or arm’s length”,  
or

- (b) after “nil” insert “or negligible”.
- (3) In subsection (1) –
  - (a) in paragraph (a), after “value” insert “or by reference to the arm’s length provision”, and
  - (b) in paragraph (b), after “nil” insert “, or a negligible value,”.
- (4) In subsection (2), in the words after paragraph (c), after “value”, in the second place it occurs, insert “or (as the case may be) by reference to the arm’s length provision”.

### CHAPTER 3

#### EXCHANGE GAINS AND LOSSES ETC

##### *Treatment of exchange gains and losses under Part 4 of TIOPA 2010*

- 26 (1) In section 147(6) of TIOPA 2010 –
- (a) after paragraph (b) insert –
    - “(ba) section 173A,”, and
  - (b) omit paragraphs (e) and (f) (exclusion of exchange gains and losses from loan relationships and derivative contracts).
- (2) After section 173 of that Act insert –
- “173A Exchange gains and losses arising as a result of qualifying loan relationships and derivative contracts**
- (1) Neither subsection (3) nor (5) of section 147 applies in relation to exchange gains and losses to the extent they arise, or would arise if either subsection applied, in relation to a qualifying financial instrument of a company.
  - (2) Accordingly, for the purposes of determining whether actual provision confers a potential advantage on person, ignore the effect of so much of any exchange gain or loss as arises, or would have arisen, in relation to a qualifying financial instrument.
  - (3) In this section a qualifying relevant financial instrument of a company means an instrument that is, or forms part of, actual provision to the extent –
    - (a) it is matched with another relevant financial instrument of the company,
    - (b) the instrument forms part of a currency tax offset arrangement,
    - (c) an exchange gain or loss arising to the company in relation to the instrument would be –
      - (i) prescribed an exchange gain or loss under regulation 3(1) or (5), 4(1) or (4A) or 5A(1) of the Loan Relationships and Derivative Contracts (Disregard

- and Bringing into Account of Profits and Losses) Regulations 2004,
- (ii) an excluded amount for the purposes of sections 598(1)(a) and 606(4) of CTA 2009 as a result of regulation 5ZA(1) of those regulations, or
  - (iii) an excluded amount for the purposes of section 598(1)(a) of CTA 2009 as a result of regulation 7A of those regulations,
  - (d) the relevant financial instrument is denominated in the reference currency used by the company in relation to the actual provision, or the part of the actual provision, to which the relevant financial instrument relates.
- (4) A relevant financial instrument of a company is matched with another financial instrument of the company to the extent that those instruments are in a matching relationship.
  - (5) A relevant financial instrument of a company is in a matching relationship with another relevant financial instrument of the company if one is intended by the company to act to eliminate or substantially reduce the currency risk of the other.
  - (6) A relevant financial instrument of a company forms part of a currency tax offset arrangement to the extent that—
    - (a) the company (“the first company”) has an exchange gain or loss arising in relation to the instrument and that would (ignoring this Part) be brought into account,
    - (b) that gain or loss is offset by a corresponding exchange loss or gain arising to another company in relation to that financial instrument or another relevant financial instrument and that would (ignoring this Part) be brought into account by that other company, and
    - (c) the companies intended that the gain or loss referred to in paragraph (a) would be offset by the loss or gain referred to in paragraph (b).
  - (7) In this section—
    - “currency risk” means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time;
    - “reference currency”, in relation to a company and actual provision or part of actual provision, means the currency by reference to which the profits of the company, so far as they relate to the provision or part, are calculated for corporation tax purposes;
    - “relevant financial instrument” means—
      - (a) a loan relationship, or

- (b) a derivative contract.”

*Amendments of CTA 2009*

- 27 (1) Sections 447, 449 to 451 and 694 of CTA 2009 are repealed (treatment of exchange gains and losses subject to Part 4 of TIOPA 2010).
- (2) In section 452 of that Act (exchange gains and losses where loan not on arm's length terms) –
- (a) in subsection (1) for subsection (a) substitute –
- “(a) a company would be treated as having a debtor relationship, or would be treated as borrowing more under an existing debtor relationship, in relation to an accounting period if –
- (i) an election were made under section 153B(2) of TIOPA 2010 in relation to that period,
- (ii) a claim were made under section 192(1) of that Act in relation to that period, or
- (iii) such an election and such a claim were made in relation to that period, and”
- (b) in subsection (2), for “claim” substitute “election, claim or election and claim”
- (c) in subsection (3) –
- (i) in the words before paragraph (a), for the words from “a claim” to the end substitute “one or more elections or claims made under section 153B(2) or 192(1) of TIOPA 2010 or assumed to have been made as a result of subsection (2) –”, and
- (ii) in paragraph (a), after “relationship” insert “, or is treated as borrowing more under an existing debtor relationship”,
- (d) in subsection (4) –
- (i) omit “under section 447”,
- (ii) for “issuing company” substitute “borrower”, and
- (iii) after “relationship”, in the second place it occurs, insert “as a result of Part 4 of TIOPA 2010”,
- (e) in subsection (5) –
- (i) omit “under section 447”,
- (ii) for “issuing company” substitute “borrower”, and
- (iii) after “relationship”, in the second place it occurs, insert “as a result of Part 4 of TIOPA 2010”, and
- (f) in subsection (5A) for “issuing company” substitute “borrower”.

*Commencement of paragraphs 26 and 27*

- 28 (1) The amendments made by paragraphs 26 and 27 have effect in relation to accounting periods beginning on or after [commencement date].

- (2) But for the purposes of sub-paragraph (1), an accounting period beginning before and ending on or after [commencement date] 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 (and see further sections 307 and 595 of CTA 2009).

*Designated currency elections*

- 29 In section 9A of CTA 2010, after subsection (2) insert—
- “(2A) For the purposes of determining whether an election under this section takes effect, ignore the effect (if any) of Part 4 of TIOPA 2010 (transfer pricing).”