



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XI

#### COMPANY TAXATION

#### CHAPTER I

##### MAIN PROVISIONS

##### *General system of taxation*

#### **238 Charge to corporation tax**

- (1) Corporation tax shall be charged on profits of companies, and the Corporation Tax Acts shall apply, for any financial year for which Parliament so determines and where an Act charges corporation tax for any financial year the Corporation Tax Acts apply, without any express provision, for that year accordingly.
- (2) The provisions of the Income Tax Acts relating to the charge of income tax other than surtax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—
  - (a) the company is resident in the United Kingdom, or
  - (b) the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax by section 246(2) below.
- (3) A company shall not be chargeable to capital gains tax in respect of gains accruing to it so that it is chargeable in respect of them to corporation tax or would be so chargeable but for an exemption from corporation tax.
- (4) In this Part of this Act, except in so far as the context otherwise requires—
  - (a) " profits " means income and chargeable gains, and

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- (b) " trade " includes " vocation ", and includes also an office or employment or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts.

### **239 U.K. company distributions not chargeable to corporation tax**

Except as otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the United Kingdom, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

### **240 Income tax on distributions, etc., received by U.K company**

- (1) Except as otherwise provided by the Corporation Tax Acts, a company resident in the United Kingdom shall not, in respect of distributions received in any year of assessment from another such company (in the Corporation Tax Acts referred to as the recipient's " franked investment income "), be entitled to repayment of income tax on any surplus in amount or value of that franked investment income over the aggregate amount or value of the distributions made by it in that year.
- (2) Where in any year of assessment a company has such a surplus of franked investment income, the surplus shall be carried forward to the following year and treated for purposes of this section (including any further application of this subsection) as an amount of franked investment income received in that year ; but where by virtue of this subsection income tax in respect of franked investment income received in any year of assessment becomes repayable in a later year, it shall be repaid at the rate for the year in which the income was received, and tax for an earlier year of assessment shall be repaid before tax for a later year.
- (3) Subsection (1) above shall not apply—
  - (a) to a company which is wholly exempt from corporation tax or is only not exempt in respect of trading income, or
  - (b) in respect of distributions in relation to which express exemption (otherwise than by section 239 above) is given, whether specifically or by virtue of a more general exemption from tax, under any provision of the Tax Acts.
- (4) No payment made by a company resident in the United Kingdom shall by virtue of this section or otherwise be treated for any purpose of the Income Tax Acts as paid out of profits or gains brought into charge to income tax ; nor shall any right or obligation under the Income Tax Acts to deduct income tax from any payment be affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.
- (5) Subject to the provisions of the Corporation Tax Acts, where a company resident in the United Kingdom receives any payment on which it bears income tax by deduction (not being franked investment income), the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax); and accordingly in respect of that payment the company, unless wholly exempt from corporation tax, shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

- (6) Schedule 9 to this Act shall have effect for the purpose of implementing the preceding subsections, and for regulating the time and manner in which companies resident in the United Kingdom are to account for and pay income tax in respect of distributions made by them, and in respect of payments from which tax is deductible other than distributions, or are to be repaid income tax in respect of distributions and payments received by them.
- (7) References in this section to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and nothing in this section shall apply to distributions in respect of which the company making them is not liable (apart from any election for group income under section 256(1) below) to account for income tax under section 232(2) of this Act; and references to "franked investment income" shall be construed accordingly.

#### **241 Claims for repayment of income tax deducted from receipts**

Effect shall be given—

- (a) to section 238(2) above, and to that section as modified by section 240(5) above and by section 246(3) below, and
- (b) so far as the exemptions from income tax conferred by the Corporation Tax Acts call for repayment of tax, to those exemptions,

by means of a claim.

#### **242 Explanation of income tax deductions to be annexed to dividend warrants, etc.**

- (1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, in payment of any dividend or interest distributed by any company, being a company within the meaning of the Companies Act 1948, or the Companies Act (Northern Ireland) 1960, or a company created by letters patent or by or in pursuance of an Act of Parliament, shall have annexed thereto or be accompanied by a statement in writing showing—
- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid, and
  - (b) the rate and the amount of income tax appropriate to such gross amount, and
  - (c) the net amount actually paid.
- (2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty of £10:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed £100.

### *Corporation tax*

#### **243 General scheme of corporation tax**

- (1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.

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- (2) A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.
- (3) Corporation tax for any financial year shall be charged on profits arising in that year; but assessments to corporation tax shall be made on a company by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall, where necessary, be apportioned between the financial years in which the accounting period falls.
- (4) Except as provided by section 244 below and section 344 of this Act (special provisions for building societies), corporation tax assessed for an accounting period shall be paid within nine months from the end of that period or, if it is later, within one month from the making of the assessment.
- (5) In any financial year assessments for accounting periods falling wholly or partly in that year or (subject to subsection (6) below) in the preceding year may, notwithstanding that corporation tax has not at the time been charged for the year in question, charge tax for so much of the period as falls within that year according to the rate of tax last fixed, but any such charge shall be subject to later adjustment, if need be, by discharge or repayment of tax or by a further assessment if for that year corporation tax is not charged by an Act passed not later than 5th August next after the end of the year or is charged otherwise than as it has been assessed.
- (6) Where the House of Commons passes a Resolution for fixing the rate of corporation tax for any financial year, or for altering the tax for any financial year, then any assessment to tax afterwards made by virtue of subsection (5) above may be made in accordance with the Resolution; but no assessment made by virtue of that subsection later than 5th May next after the end of any financial year shall charge tax for that year, unless a Resolution for charging corporation tax for that year has been so passed, nor shall any assessment be made by virtue of any such Resolution later than the prescribed period from the date on which the Resolution is passed.
- (7) In subsection (6) above " the prescribed period " means—
  - (a) as respects a Resolution passed in March or April in any year, a period beginning with the passing of the Resolution and ending with 5th August in the same calendar year,
  - (b) as respects any other Resolution, four months after the date on which the Resolution is passed.

#### **244 Time for payment of corporation tax: companies trading before financial year 1965**

- (1) Where, in respect of a trade chargeable under Case I or II of Schedule D, a company was within the charge to income tax from a time before the financial year 1965, then (so long as the company continues to be within the charge to corporation tax in respect of that trade) section 243(4) above shall not apply to the company, but corporation tax assessed on the company (or on some person in its place) for any accounting period, whether or not in respect of the trade, shall be paid within the like interval from the

end of the accounting period as there was between the end of the basis period of the trade for the year 1965-66 and 1st January 1966 or, if it is later, within one month from the making of the assessment:

Provided that this subsection shall not apply unless the said interval is longer than nine months.

- (2) Where subsection (1) above applies to a company having distinct trades which had different basis periods for the year 1965-66, that one of the basis periods which ended earliest shall be taken.
- (3) References in this section to the basis period for the year 1965-66 are, in relation to any source of income, references to the period on the income of which the income tax (if any) chargeable for that year fell to be finally computed in respect of the source or, where by virtue of any provision of the Income Tax Acts the income of any other period was to be taken to be the income of the said period, that other period.

#### **245 Tax on company in liquidation**

- (1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.
- (2) Corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at a rate which, subject to subsection (3) below, shall be the rate of corporation tax fixed for the penultimate year.
- (3) If the affairs of the company are completely wound up before an Act is passed fixing the rate of corporation tax for its penultimate year, corporation tax shall be charged on the company's profits arising in the winding-up in its final year, and if the winding-up commenced before the final year, on the company's profits arising at any time in its penultimate year, at the rate of corporation tax fixed by the budget resolution for the penultimate year (and without regard to the rate fixed by any subsequent Act); and any assessment made by virtue of section 243(5) above shall be subject to any such adjustment, by discharge or repayment of tax or by a further assessment, as may be required to give effect to this subsection.
- (4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.
- (5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, the inspector may, with the concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 247(7) below.
- (6) The assumption of the wrong date shall not alter the company's final and penultimate year, and if the right date is later an accounting period shall end on the date assumed, and a new accounting period shall begin and the said section 247(7) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.
- (7) In this paragraph "budget resolution" means a resolution of the House of Commons for fixing the rate of corporation tax for the financial year in question, and if there is more than one such resolution, means the first of them.

**246 Companies not resident in United Kingdom**

- (1) A company not resident in the United Kingdom shall not be within the charge to corporation tax unless it carries on a trade in the United Kingdom through a branch or agency but, if it does so, it shall, subject to any exceptions provided for by the Corporation Tax Acts, be chargeable to corporation tax on all its chargeable profits wherever arising.
- (2) For purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade there through a branch or agency shall be—
  - (a) any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and
  - (b) such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by Part III of the Finance Act 1965 made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.
- (3) Subject to section 319 of this Act (overseas life insurance companies), where a company not resident in the United Kingdom receives any payment on which it bears income tax by deduction, and the payment forms part of, or is to be taken into account in computing, the company's income chargeable to corporation tax, the income tax thereon shall be set off against any corporation tax assessable on that income by an assessment made for the accounting period in which the payment falls to be taken into account for corporation tax; and accordingly in respect of that payment the company shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

**247 Basis of, and periods for, assessment**

- (1) Except as otherwise provided by the Corporation Tax Acts, corporation tax shall be assessed and charged for any accounting period of a company on the full amount of the profits arising in the period (whether or not received in or transmitted to the United Kingdom) without any other deduction than is authorised by those Acts.
- (2) An accounting period of a company shall begin for purposes of corporation tax whenever—
  - (a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the United Kingdom or acquiring a source of income, or otherwise; or
  - (b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.
- (3) An accounting period of a company shall end for purposes of corporation tax on the first occurrence of any of the following:—
  - (a) the expiration of twelve months from the beginning of the accounting period;
  - (b) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period ;
  - (c) the company beginning or ceasing to carry on any trade, or to be, in respect of a trade, within the charge to corporation tax;
  - (d) the company beginning or ceasing to be resident in the United Kingdom;
  - (e) the company ceasing to be within the charge to corporation tax.

- (4) For the purposes of this section a company resident in the United Kingdom, if not otherwise within the charge to corporation tax, shall be treated as coming within the charge to corporation tax at the time when it commences to carry on business.
- (5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) above shall apply with reference to the accounting date of such one of the trades as the Board may determine.
- (6) If a chargeable gain or allowable loss accrues to a company at a time not otherwise within an accounting period of the company, an accounting period of the company shall then begin for the purposes of corporation tax, and the gain or loss shall accrue in that accounting period.
- (7) Notwithstanding anything in the preceding subsections, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up, and thereafter, subject to section 245(6) above, an accounting period shall not end otherwise than by the expiration of twelve months from its beginning or by the completion of the winding up.

For this purpose a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding up petition if no such resolution has previously been passed and a winding up order is made on the petition, or on the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act 1948.

- (8) Where it appears to the inspector that the beginning or end of any accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding twelve months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either the inspector on further facts coming to his knowledge sees fit to revise it or on an appeal against the assessment in respect of some other matter the company shows the true accounting periods; and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the true accounting periods, and there may be made such other assessments for any such periods or any of them as might have been made at the time when the assessment appealed against was made.

## **248 Allowance of charges on income**

- (1) In computing the corporation tax chargeable for any accounting period of a company any charges on income paid by the company in the accounting period, so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period as reduced by any other relief from tax, other than group relief.
- (2) Subject to the following subsections and to any other express exceptions, " charges on income " means for the purposes of corporation tax payments of any description mentioned in subsection (3) below, not being dividends or other distributions of the company; but no payment which is deductible in computing profits or any description of profits for purposes of corporation tax shall be treated as a charge on income.

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- (3) Subject to subsections (4) to (6) below, the payments referred to in subsection (2) above are—
- (a) any yearly interest, annuity or other annual payment and any such other payments as are mentioned in section 52(2) of this Act but not including sums which are or, but for any exemption would be, chargeable under Schedule A, and
  - (b) any other interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom, or from a person who in the opinion of the Board is bona fide carrying on business as a member of a stock exchange in the United Kingdom or bona fide carrying on the business of a discount house in the United Kingdom;
- and for the purposes of this section any interest payable by a company as mentioned in paragraph (b) above shall be treated as paid on its being debited to the company's account in the books of the person to whom it is payable.
- (4) No such payment as is mentioned in subsection (3) (a) above made by a company to a person not resident in the United Kingdom shall be treated as a charge on income unless the company is so resident and either—
- (a) the company deducts income tax from the payment in accordance with section 53 or section 54 of this Act, and accounts under Schedule 9 to this Act for the tax so deducted, or
  - (b) the payment is a payment of interest falling within section 249 below, or
  - (c) the payment is one payable out of income brought into charge to tax under Case IV or V of Schedule D.
- (5) No such payment made by a company as is mentioned in subsection (3) above shall be treated as a charge on income if—
- (a) the payment is charged to capital, or the payment is not ultimately borne by the company; or
  - (b) the payment is not made under a liability incurred for a valuable and sufficient consideration (and, in the case of a company not resident in the United Kingdom, incurred wholly and exclusively for the purposes of a trade carried on by it in the United Kingdom through a branch or agency), and is not a covenanted donation to charity.
- (6) No such payment of interest as is mentioned in subsection (3) above made by a company shall be treated as a charge on income unless—
- (a) the company exists wholly or mainly for the purpose of carrying on a trade, or
  - (b) the payment of interest is wholly and exclusively laid out or expended for the purposes of a trade carried on by the company, or
  - (c) the company is an investment company (as defined by section 304(5) of this Act, and including an authorised unit trust scheme), or
  - (d) the payment of interest would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if it were made by an individual.
- (7) The deductions authorised by subsection (3)(a) above shall include five-sixths and no more of any payment made as an instalment, or part of an instalment, of an annuity within the meaning of the Tithe Acts 1936 and 1951; and subsection (5)(b) shall not apply to any such payment.



- (8) A covenanted donation to charity shall not be regarded for the purposes of the definition of " charges on income " in this section, or for any of the other purposes of the Corporation Tax Acts, as being, by reason of section 284(1)(a) or any other provision of this Act, a distribution.
- (9) In this section " covenanted donation to charity " means a payment under a disposition or covenant made by the company in favour of a body of persons or trust established for charitable purposes only, whereby the like annual payments (of which the donation is one) become payable for a period which may exceed six years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.

#### **249 Charges on income: interest payable to non-residents**

- (1) A payment of interest by a company is one to which section 248(4)(b) above applies if the company is carrying on a trade and—
- (a) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside the United Kingdom, and
  - (b) the interest is in fact paid outside the United Kingdom, and
  - (c) either—
    - (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company's trade carried on outside the United Kingdom, or
    - (ii) the interest is payable in the currency of a territory outside the scheduled territories and, subject to subsection (2) below, the liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on.
- (2) Subsection (1)(c)(ii) above does not apply where—
- (a) the trade is carried on by a body of persons over whom the person entitled to the interest has control, or
  - (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control, or
  - (c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.

In this subsection the references to a body of persons include references to a partnership and " control " has the meaning assigned to it by section 534 of this Act.

- (3) For the purposes of subsection (1) above the company paying the interest shall be treated as carrying on any trade carried on by a 75 per cent. subsidiary of it (both being bodies corporate), if the subsidiary (as well as the company making the payment) is resident in the United Kingdom.
- (4) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another that other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade ; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

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- (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (5) In this section " the scheduled territories " means the territories specified in Schedule 1 to the Exchange Control Act 1947 as for the time being in force.

## **250 Computation of income: application of income tax principles**

- (1) Except as otherwise provided by this Act or any other enactment relating to income tax or corporation tax, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.
- (2) For the purposes of this section " income tax law " means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax other than surtax, except that it does not include such of the enactments of the Income Tax Acts as make special provision for individuals in relation to matters referred to in subsection (1) above.
- (3) Accordingly for purposes of corporation tax income shall be computed, and the assessment shall be made, under the like Schedules and Cases as apply for purposes of income tax, and in accordance with the provisions applicable to those Schedules and Cases, but (subject to the provisions of the Corporation Tax Acts) the amounts so computed for the several sources of income, if more than one, together with any amount to be included in respect of chargeable gains, shall be aggregated to arrive at the total profits.
- (4) Without prejudice to the generality of subsection (1) above, any provision of the Income Tax Acts which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.
- (5) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax, it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and for that purpose in any such enactment references to a relief from or charge to income tax, or to a specified provision of the Income Tax Acts shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding provision of the Corporation Tax Acts.
- (6) The provisions of the Income Tax Acts applied by this section do not include anything in—
  - (a) Part I or Part II of this Act, or
  - (b) Chapter II of Part VI of this Act (Schedule D basis of assessment, etc.), or
  - (c) Chapter VIII of Part VI of this Act (Case VII of Schedule D),

and nothing in this section shall be taken to mean that income arising in any period is to be computed by reference to any other period (except in so far as this results from apportioning to different parts of a period income of the whole period).

## **251 Computation of income: special rules**

- (1) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company's income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.
- (2) Subject to subsection (3) below and to any other provision of the Corporation Tax Acts which expressly authorises such a deduction, no deduction shall be made in computing income from any source—
  - (a) in respect of dividends or other distributions ; nor
  - (b) in respect of any yearly interest, annuity or other annual payment or in respect of any such other payments as are mentioned in section 52(2) of this Act, but not including sums which are, or but for any exemption would be, chargeable under Schedule A.
- (3) In computing income from a trade subsection (2)(b) above shall not prevent the deduction of yearly interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business in the United Kingdom.

## **252 Company reconstructions without change of ownership**

- (1) Where, on a company (" the predecessor ") ceasing to carry on a trade, another company (" the successor ") begins to carry it on, and—
  - (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
  - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (5) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

- (2) The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by the Capital Allowances Act 1968 (including the enactments which under this Act are to be treated as contained in Part I of that Act); but there shall be made to or on the successor in accordance with that Act all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it, and the amount of any such allowance or charge shall be computed as if the successor had been carrying on the trade since the predecessor began to do so and as if everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

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- (3) The predecessor shall not be entitled to relief under section 178 of this Act (terminal losses), except as provided by subsection (5) below; and, subject to any claim made by the predecessor under section 177(2) of this Act (set off of loss against total profits), the successor shall be entitled to relief under section 177(1) of this Act (carry forward of loss), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to claim relief if it had continued to carry on the trade.
- (4) Any securities within the meaning of section 471 of this Act (purchase and sale of securities) which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.
- (5) On the successor ceasing to carry on the trade—
- (a) if the successor does so within four years of succeeding to it, any relief which might be given to the successor under section 178 of this Act on its ceasing to carry on the trade may, so far as it cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (including any amount treated as a loss under subsection (3) of that section); and
  - (b) if the successor ceases to carry on the trade within one year of succeeding to it, relief may be given to the predecessor under section 178 of this Act in respect of any loss incurred by it (or amount treated as such a loss under subsection (3) of that section);
- but for the purposes of section 178 of this Act, as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.
- (6) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, then no relief shall be given to the predecessor by virtue of subsection (5) above by reference to that event, but subject to that subsections (2) to (5) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—
- (a) in relation to the earlier event " successor " shall include the successor at either event; and
  - (b) in relation to the later event " predecessor " shall include the predecessor at either event;
- and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.
- (7) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (6) above has effect on that event in relation to that separate trade ; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (6) above has effect on that event in relation to that separate trade.

- (8) Where under subsection (7) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, the accounting periods of the company shall be adjusted accordingly, and any necessary apportionment shall be made of receipts, expenses, allowances or charges.
- (9) Where, by virtue of subsection (8) above, any sum falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the sum is to be apportioned shall be determined, for the purposes of the tax of all those companies—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners,
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners, and
  - (c) in any other case, by the Special Commissioners,
- and any such Commissioners shall determine the question in like manner as if it were an appeal:
- Provided that all the said companies shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.
- (10) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

### **253 Company reconstructions: supplemental**

- (1) For the purposes of section 252 above—
- (a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade ;
  - (b) a trade or interest therein belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust;
  - (c) a trade or interest therein belonging to a company shall, where the result of so doing is that subsection (1) or (6) of section 252 above has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.
- (2) For the purposes of section 252 above, a trade or interest therein which belongs to a company engaged in carrying it on may be regarded—
- (a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or
  - (b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,
- and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of

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voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

- (3) For the purposes of subsection (2) above—
- (a) references to ownership shall be construed as references to beneficial ownership;
  - (b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;
  - (c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 532 of this Act; and
  - (d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.
- (4) In determining, for the purposes of section 252 above, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose " relative " means husband, wife, ancestor, lineal descendant, brother or sister.

#### *Franked investment income*

### **254 Set-off of losses etc. against surplus of franked investment income**

- (1) Where a company has a surplus of franked investment income for any year of assessment, the company may on making a claim for the purpose require that the amount of the surplus shall for all or any of the purposes mentioned in subsection (2) below be treated as if it were a like amount of profits chargeable to corporation tax, and subject to subsection (4) below the provisions mentioned in subsection (2) below shall apply in accordance with this section to reduce the amount of the surplus for purposes of section 240 of this Act so that income tax shall be repayable accordingly.
- (2) The purposes for which a claim may be made under subsection (1) above are those of—
- (a) the setting of trading losses against total profits under section 177(2) of this Act;
  - (b) the deduction of charges on income under section 248 of this Act;
  - (c) the deduction of expenses of management under section 304 or 305 of this Act;
  - (d) the setting of certain capital allowances against total profits under section 74(3) of the Capital Allowances Act 1968.
- (3) Where a company makes a claim under this section for any year of assessment, then—
- (a) the amount to which the claim relates shall for purposes of the claim be treated as profits of the accounting period or periods comprising or together

- comprising that year, and shall be apportioned between them (if more than one) in proportion to the parts of the year respectively comprised in them ;
- (b) the reduction falling to be made in profits of an accounting period shall be made as far as may be in profits chargeable to corporation tax rather than in the amount treated as profits so chargeable under this section.
- (4) Where a claim under this section relates to section 177(2) of this Act or to section 74(3) of the Capital Allowances Act 1968 and an accounting period of the company falls partly before and partly within the time mentioned in that subsection, then—
- (a) the restriction imposed by section 177(3) of this Act or by section 74(4) of the Capital Allowances Act 1968 on the amount of the relief shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as profits of the period under this section ; but
- (b) relief under this section shall be given only against so much (if any) of the amount so treated as would under subsection (3)(a) above be apportioned to the part of the period falling within the said time if that part were a separate accounting period.
- (5) Where—
- (a) on a claim made under this section for any year of assessment relief is given in respect of the whole or part of any loss incurred in a trade, or of any amount which could be treated as a loss under section 177(8) of this Act; and
- (b) in a later year of assessment the distributions on which the company pays the income tax under section 232(2) of this Act exceed its franked investment income ;
- then (unless the company has ceased to carry on the trade or to be within the charge to corporation tax in respect of it) the company shall, for purposes of section 177(1) of this Act, be treated as having, in the accounting period ending at or last before the beginning of the later year of assessment, incurred a loss equal to whichever is the lesser of—
- (i) the excess referred to in paragraph (b) above ; and
- (ii) the amount in respect of which relief was given as aforesaid, or so much of that amount as remains after deduction of any part of it dealt with under this subsection in relation to an earlier year of assessment.
- (6) Subsection (5) above shall apply, with the necessary adaptations.—
- (a) in relation to relief given in respect of management expenses; and
- (b) in relation to relief given in respect of capital allowances ;
- as it applies in relation to relief given in respect of a loss (the reference to the company ceasing to be within the charge to corporation tax in respect of the trade being construed as a reference to its ceasing to be within that charge at all):
- Provided that any amount which may be dealt with under subsection (5) as a loss shall be so dealt with rather than under this subsection, except in so far as the company concerned otherwise elects.
- (7) The time limits for claims under this section shall be as follows—
- (a) if and so far as the purpose for which the claim is made is the setting of trading losses against total profits under section 177(2) of this Act, two years from the end of the year of assessment in which falls the end of the accounting period in which the trading loss is incurred,

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- (b) if and so far as the purpose for which the claim is made is the deduction of charges on income under section 248 of this Act or of expenses of management under section 304 or 305 of this Act, six years from the end of the accounting period in which the charges were paid or the expenses of management were incurred,
  - (c) if and so far as the purpose for which the claim is made is the setting of capital allowances against total profits under section 74(3) of the Capital Allowances Act 1968, two years from the end of the year of assessment in, which falls the end of the accounting period for which the capital allowances fall to be made.
- (8) For the purposes of a claim under this section for any year of assessment the surplus of franked investment income for any year of assessment shall be calculated without regard to the part, if any, carried forward from an earlier year of assessment.

### **255 Set-off of loss brought forward, or terminal loss**

- (1) Where a company has a surplus of franked investment income in any year of assessment, the company, instead of or in addition to making a claim under section 254 above, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 177(1) or under section 178 of this Act, up to the amount of franked investment income for the year which, if chargeable to corporation tax, would have been so taken into account by virtue of section 177(7) of this Act; and (subject to the restriction to the said amount of franked investment income) the following subsections shall have effect where the company makes a claim under this section for any year of assessment.
- (2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period or periods comprising or together comprising the year of assessment, and shall be apportioned between them (if more than one) in proportion to the parts of the year respectively comprised in them.
- (3) The reduction falling to be made in trading income of an accounting period shall be made as far as may be in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.
- (4) If the claim relates to section 177(1) of this Act, section 254(5) above shall apply in relation to it.
- (5) If the claim relates to section 178 of this Act and an accounting period of the company falls partly outside the three years mentioned in subsection (1) of that section, then—
- (a) the restriction imposed by subsection (2) of that section on the amount of the reduction that may be made in the trading income of that period shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as trading income of the period by virtue of this section, but
  - (b) relief under this section shall be given only against so much (if any) of the amount so treated as would under subsection (2) above be apportioned to the part of the period falling within the three years in question if that part were a separate accounting period.
- (6) The time limits for claims under this section shall be as follows—
- (a) if and so far as the purpose for which the claim is made is the allowance of relief under section 177(1) of this Act, six years from the end of the year of assessment for which the claim is made,



- (b) if and so far as the purpose for which the claim is made is the allowance of relief under section 178 of this Act, six years from the time when the company ceases to carry on the trade.
- (7) For the purposes of a claim under this section for any year of assessment the surplus of franked investment income for any year of assessment shall be calculated without regard to the part, if any, carried forward from an earlier year of assessment.

### *Group income*

#### **256 Group income, etc.**

- (1) Where a company receives dividends from another company (both being bodies corporate resident in the United Kingdom), and the company paying the dividends is—
- (a) a 51 per cent. subsidiary of the other or of a company so resident of which the other is a 51 per cent. subsidiary; or
  - (b) a trading or holding company owned by a consortium the members of which include the company receiving the dividends,

then, subject to the following provisions of this section, the company receiving the dividends and the company paying them may jointly elect that this subsection shall apply to the dividends received from the latter by the former, and so long as the election is in force any such dividends shall be excluded from sections 232(2) and 240 of this Act, and are accordingly not included, unless otherwise stated, in references to the franked investment income of the company receiving them (but are in the Corporation Tax Acts referred to as "group income" of that company):

Provided that an election under this subsection shall not prevent the payment of any amount of dividends under deduction of income tax, and where notwithstanding the election any amount is so paid, the Corporation Tax Acts shall have effect in relation to it as if there had been no such election.

- (2) Where a company receives from another company (both being bodies corporate resident in the United Kingdom) any such payments as are referred to below in this subsection, and either—
- (a) the conditions of subsection (1)(a) or (b) above would be satisfied in relation to the companies if the payments were dividends, or
  - (b) the company receiving the payments is a 51 per cent. subsidiary of the other company,

then, subject to the following provisions of this section, the company receiving the payments and the company paying them may jointly elect that this subsection shall apply to any such payments received from the latter by the former, and so long as the election is in force those payments may be made without deduction of income tax and neither section 53 nor section 54 of this Act shall apply thereto.

The payments for which an election may be made under this subsection are any payments which are for corporation tax charges on income of the company making them.

- (3) Subsections (1) and (2) above shall not apply to dividends or other payments received by a company on any investments, if a profit on the sale of those investments would be treated as a trading receipt of that company.

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- (4) Where a company purports by virtue of an election under this section to pay any dividends or other payments without deduction of income tax, and income tax ought to have been deducted, then the company receiving the dividends or other payments shall be treated for the purposes of sections 232 and 240 of this Act as if that tax had been deducted and been repaid to it under Schedule 9 to this Act, and the amount of that tax may be recovered from it accordingly by adjustment of the payments and repayments under the said Schedule 9 or otherwise.
- (5) In determining for the purposes of this section whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly or in directly in a body corporate not resident in the United Kingdom, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.
- (6) For the purposes of this section—
- (a) " trading or holding company " means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries,
  - (b) " trading company " means a company whose business consists wholly or mainly of the carrying on of a trade or trades,
  - (c) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by five or fewer companies resident in the United Kingdom of which none beneficially owns less than one-twentieth of that capital, and those companies are called the members of the consortium.
- (7) References in this section to dividends or payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person, and references to " group income " shall be construed accordingly.

## **257 Election for group income, etc.**

- (1) An election under subsection (1) or subsection (2) of section 256 above (in the following provisions of this section referred to as an " election ") shall be made by notice in writing to the inspector, and the notice shall set out the facts necessary to show that the companies are entitled to make the election.
- (2) An election shall not have effect in relation to dividends or other payments paid less than three months after the giving of the notice and before the inspector is satisfied that the election is validly made, and has so notified the companies concerned; but shall be of no effect if within those three months the inspector notifies the companies concerned that the validity of the election is not established to his satisfaction:

Provided that the companies shall have the like right of appeal against any decision that the validity of the election is not established as the company paying the dividends or other payments would have if it were an assessment made on that company, and Part V of the Taxes Management Act 1970 shall apply accordingly.

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- (3) An election shall cease to be in force if at any time the companies cease to be entitled to make the election, and on that happening each company shall forthwith notify the inspector.
- (4) Either of the companies making an election may at any time give the inspector notice in writing revoking the election; and any such notice shall have effect from the time it is given.

### *Group relief*

## **258 Group relief**

- (1) Relief for trading losses and other amounts eligible for relief from corporation tax may in accordance with the following provisions of this Chapter be surrendered by a company (called " the surrendering company ") which is a member of a group of companies and, on the making of a claim by another company (called " the claimant company ") which is a member of the same group, may be allowed to the claimant company by way of a relief from corporation tax called " group relief".
- (2) Group relief shall also be available in accordance with the said provisions—
  - (a) where the surrendering company is a trading company which is owned by a consortium and which is not a 75 per cent. subsidiary of any company, and the claimant company is a member of the consortium, or
  - (b) where the surrendering company is a trading company—
    - (i) which is a 90 per cent. subsidiary of a holding company which is owned by a consortium, and
    - (ii) which is not a 75 per cent. subsidiary of a company other than the holding company,and the claimant company is a member of the consortium, or
  - (c) where the surrendering company is a holding company which is owned by a consortium and which is not a 75 per cent. subsidiary of any company, and the claimant company is a member of the consortium;

Provided that no claim may be made by a member of a consortium if a profit on a sale of the share capital of the surrendering or holding company which that member owns would be treated as a trading receipt of that member.

- (3) Subject to the following sections of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.
- (4) A payment for group relief—
  - (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income,and in this subsection "payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.
- (5) For the purpose of this section and the following sections of this Chapter—

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- (a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company,
  - (b) " holding company " means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries, and which are trading companies,
  - (c) " trading company " means a company whose business consists wholly or mainly of the carrying on of a trade or trades.
- (6) In applying for the said purposes the definition of " 75 per cent. subsidiary " in section 532 of this Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital.
- (7) References in this and the following sections of this Chapter to a company apply only to bodies corporate resident in the United Kingdom; and in determining for the purposes of this and the following sections of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade, or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt, or
  - (c) of any share capital which it owns directly or in directly in a body corporate not resident in the United Kingdom.
- (8) For the said purposes—
- (a) a company is owned by a consortium if all of the ordinary share capital of that company is directly and beneficially owned between them by five or fewer companies, and those companies are called the members of the consortium,
  - (b) a member's share in a consortium shall be the percentage of the ordinary share capital of the surrendering company, or as the case may be of the holding company through which the surrendering company is owned, which is beneficially owned by that member in the relevant accounting period of the surrendering company, and if that percentage has fluctuated in the accounting period, the average percentage over the period shall be taken.

## **259 Kinds of group relief**

- (1) If in any accounting period the surrendering company has incurred a loss, computed as for the purposes of subsection (2) of section 177 of this Act, in carrying on a trade, the amount of the loss may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period:

Provided that this subsection shall not apply to so much of a loss as is excluded from the said subsection (2) by subsection (4) of the said section, or by section 180 of this Act (farming and market gardening).

- (2) If for any accounting period any capital allowances fall to be made to the surrendering company which are to be given by discharge or repayment of tax and are to be available primarily against a specified class of income, so much of the amount of those capital allowances (exclusive of any carried forward from an earlier period) as exceeds its income of the relevant class arising in that accounting period (before deduction of any

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losses of any other period or of any capital allowances) may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

- (3) If for any accounting period the surrendering company (being an investment company) may under section 304(1) of this Act deduct any amount as expenses of management disbursed for that accounting period, so much of that amount (exclusive of any amount deductible only by virtue of subsection (2) of the said section 304) as exceeds the company's profits of that accounting period may be set off for purposes of corporation tax against the total profits of the claimant company (whether an investment company or not) for its corresponding accounting period.
- (4) The surrendering company's profits of the period shall be determined for the purposes of subsection (3) above without any deduction under the said section 304 and without regard to any deduction falling to be made in respect of losses or allowances of any other period.
- (5) References in subsections (3) and (4) above to the said section 304 do not include references to that section as applied by section 305 of this Act to companies carrying on life assurance business.
- (6) If in any accounting period the surrendering company has paid any amount by way of charges on income, so much of that amount as exceeds its profits of the period may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (7) The surrendering company's profits of the period shall be determined for the purposes of subsection (6) above without regard to any deduction falling to be made in respect of losses or allowances of any other period, or to expenses of management deductible only by virtue of subsection (2) of section 304 of this Act.
- (8) In applying any of the preceding subsections in the case of a claim made by a company as a member of a consortium only a fraction of the loss referred to in subsection (1) above, or of the excess referred to in subsection (2) or (3) or (6) above, as the case may be, may be set off under the subsection in question, and that fraction shall be equal to that member's share in the consortium, subject to any further reduction under section 261(2) below.

## **260 Relation of group relief to other relief**

- (1) Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period before reduction by any relief derived from a subsequent accounting period, but as reduced by any other relief from tax (including relief in respect of charges on income under section 248(1) above).
- (2) The said other relief shall be determined on the assumption that the company makes all relevant claims under section 177(2) of this Act and section 74(3) of the Capital Allowances Act 1968 (set-off of trading losses and capital allowances against total profits).
- (3) For the purposes of this section "relief derived from a subsequent accounting period" means—
  - (a) relief under section 177(2) of this Act in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed, and

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- (b) relief under section 74(3) of the Capital Allowances Act 1968 in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed, and
  - (c) relief under section 87 of the Finance Act 1965 (transitional relief on cessation of trade etc.) where the company ceases to possess the source of income in question at a time after the end of the accounting period the profits of which are being computed, and
  - (d) relief under section 178 of this Act in respect of a loss incurred in an accounting period after the end of the accounting period the profits of which are being computed.
- (4) The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period, and this subsection shall have effect notwithstanding that under section 87(3) of the Finance Act 1965 relief under that section is to be given in priority to any other relief.

## 261 Corresponding accounting periods

- (1) For the purposes of group relief any accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.
- (2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

- (a) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction

$$\frac{A}{B}$$

(if that fraction is less than unity), and

- (b) the said profits against which the amount mentioned in paragraph (a) above (as reduced where so required) may be set off shall be reduced by applying the fraction

$$\frac{A}{C}$$

(if that fraction is less than unity),

where

A is the length of the period common to the two accounting periods,  
 B is the length of the accounting period of the surrendering company, and  
 C is the length of the corresponding accounting period of the claimant company.

## 262 Companies joining or leaving group or consortium

- (1) Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group, or fulfil the conditions for relief for a consortium, throughout the whole of the

surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company

- (2) Where on any occasion two companies become or cease to be members of the same group, then for the purposes specified in subsection (3) below it shall be assumed as respects each company that on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends, and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection), and—
  - (a) that the losses or other amounts of the true accounting period are apportioned to the component accounting periods on a time basis according to their lengths, and
  - (b) that the amount of total profits for the true accounting period of the company against which group relief may be allowed in accordance with section 260(1) above is also so apportioned to the component accounting periods.
- (3) Where the one company is the surrendering company and the other company is the claimant company—
  - (a) references to accounting periods, to profits, and to losses, allowances, expenses of management or charges on income of the surrendering company, in section 259 above shall be construed in accordance with subsection (2) above,
  - (b) references to accounting periods in section 261 above and subsection (1) of this section shall be so construed (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under section 261 above also be members of the same group in any corresponding accounting period of the claimant company),
  - (c) references to profits, and amounts to be set off against the profits, in section 261 above shall be so construed (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under section 261(2) above).
- (4) Subsection (2) and (3) above shall apply with the necessary modifications where a company begins or ceases to fulfil the conditions for relief for a consortium, either as a surrendering company or as a claimant company, as it applies where two companies become or cease to be members of the same group.

### **263 Exclusion of double allowances, etc.**

- (1) Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.
- (2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.
- (3) If claims for group relief are made by more than one claimant company which relate to the same accounting period of the same surrendering company, and—

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- (a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 262 above, and
- (b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

- (4) If claims for group relief are made by a claimant company as respects more than one surrendering company for group relief to be set off against its total profits for any one accounting period, and—
  - (a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 262 above, and
  - (b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

- (5) The provisions of this subsection have effect as respects a claim for group relief made by a company as a member of a consortium, in this subsection referred to as a "consortium claim"—
  - (a) a consortium claim, and a claim other than a consortium claim, shall not both have effect as respects the loss or other amount of the same accounting period of the same surrendering company, unless each of the two claims is as respects a loss or other amount apportioned under section 262(2)(a) above to a component of that accounting period, and the two components do not overlap,
  - (b) in subsections (3) and (4) above consortium claims shall be disregarded,
 and paragraph (a) above shall take effect according to the order in which claims are made.

- (6) Without prejudice to the provisions of section 87(3) of the Capital Allowances Act 1968, any reference in Part I of that Act to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

## **264 Claims and adjustments**

- (1) A claim for group relief—
  - (a) need not be for the full amount available,
  - (b) shall require the consent of the surrendering company notified to the inspector in such form as the Board may require, and
  - (c) must be made within two years from the end of the surrendering company's accounting period to which the claim relates.



- (2) A claim for group relief by a company as a member of a consortium shall require the consent of each other member of the consortium, notified to the inspector in such form as the Board may require, in addition to the consent of the surrendering company.
- (3) If the inspector discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax under Case VI of Schedule D in the amount which ought in his opinion to be charged.
- (4) Subsection (3) above is without prejudice to the making of an assessment under section 29(3)(c) of the Taxes Management Act 1970, and to the making of all such other adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

## CHAPTER II

### COMPANIES' CAPITAL GAINS

#### *General provisions*

#### **265 Computation of chargeable gains**

- (1) Subject to the provisions of this section, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting any allowable losses accruing to the company in the period and, so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously (but not earlier than the year 1965-66) accruing to the company while it has been within the charge to corporation tax.
- (2) Except as otherwise provided by the Corporation Tax Acts, the total amount of the chargeable gains to be so included shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain, or as to the time when any such amount is to be treated as accruing, being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.
- (3) Subject to subsection (4) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts ; but—
  - (a) this subsection shall not affect the references to income tax in paragraph 5(2) of Schedule 6 to the Finance Act 1965 (exclusion of expenditure by reference to hypothetical income tax),
  - (b) nothing in this section shall be taken as applying for corporation tax section 21 of the said Act (alternative charge to tax on capital gains accruing to an individual), and

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- (c) in so far as the said provisions operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.
- (4) Part III of the Finance Act 1965 as extended by this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.
- (5) Where assets of a company are vested in a liquidator under section 244 of the Companies Act 1948, or section 226 of the Companies Act (Northern Ireland) 1960, or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

## **266 Corporation tax attributable to chargeable gains: recovery from shareholder**

- (1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—
  - (a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrues to the company; or
  - (b) the distribution constitutes such a disposal of assets.
- (2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within six months from the date when it becomes payable by the company, the said person may by an assessment made within two years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—
  - (a) not exceeding the amount or value of the capital distribution which that person has received or become entitled to receive; and
  - (b) not exceeding a proportion equal to that person's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (3) A person paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.
- (4) The provisions of this section are without prejudice to any liability of the person receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.
- (5) In this section " capital distribution " has the same meaning as in paragraph 3 of Schedule 7 to the Finance Act 1965 and " connected with " shall be construed in accordance with section 533 of this Act.

## **267 Company reconstruction or amalgamation: transfer of assets**

- (1) Subject to the provisions of this section, where—
- (a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and
  - (b) the transfer takes effect after 5th April 1970, and
  - (c) at the time of the transfer both the companies are resident in the United Kingdom, and
  - (d) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then so far as relates to corporation tax on chargeable gains the two companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of Part II of Schedule 6 to the Finance Act 1965 (assets held on 6th April 1965) the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

- (2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.
- (3) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which subsection (1) or subsection (2) of section 38 of the Finance Act 1965 (unit trusts for exempt unit holders) applies.
- (4) In this section—
- " scheme of reconstruction or amalgamation " means a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,
- " trading stock " has the meaning given by section 137(4) of this Act.

## **268 Postponement of charge on transfer of assets to nonresident company**

- (1) This section applies where a company resident in the United Kingdom which is carrying on a trade outside the United Kingdom through a branch or agency transfers the trade carried on through that branch or agency, together with the whole assets of the business used for the purposes of that trade, or together with the whole of those assets other than cash, to a company not resident in the United Kingdom, and the business is so transferred wholly or partly in exchange for shares or for shares and loan stock issued by the transferee company to the transferor company, and the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company.
- (2) For the purposes of Part III of the Finance Act 1965, the transferor company shall be treated as if a fraction of any chargeable gain accruing to it on its disposal of any asset so transferred to the transferee company did not accrue to the transferor company until—

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- (a) the transferee company disposes or partly disposes of that asset, or ceases to use it, or is wound up or dissolved, or
- (b) the transferor company disposes of all or any of the shares or loan stock issued in exchange by the transferee company, or
- (c) the expiration of a period of ten years beginning with the transfer, or
- (d) the passing of a resolution or the making of an order, or any other act, for the winding up of the transferor company (unless that company is not in fact wound up or dissolved),

whichever event comes first.

- (3) A disposal of shares or loan stock by the transferor company which, by virtue of section 273 below, is treated as giving rise to neither a gain nor a loss shall be disregarded for the purposes of subsection (2)(b) above, but on the first occasion after such a disposal that there is a disposal which is not so treated of all or any of those shares or that loan stock, that subsection shall apply as if the disposal were a disposal by the transferor company.
- (4) The fraction referred to in subsection (2) above is

$$\frac{A}{B}$$

where—

A is the market value at the time of the transfer of the shares and of any loan stock received by the transferor company in exchange for the business (including any such assets as are referred to in subsection (1) above), and

B is the market value at the time of the transfer of the whole of the consideration so received by the transferor company.

- (5) For the purposes of this section the ordinary share capital of a company means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company; and if all or part of the ordinary share capital of the transferee company consists of shares of no par value, the proportion of one quarter shall be determined according to the market value of the ordinary share capital at the time of the transfer.
- (6) All such adjustments shall be made by discharge or repayment of tax as are required to give effect to the provisions of this section.
- (7) This section applies only in relation to a transfer of a trade and assets after 10th April 1968.

## **269 Interest charged to capital**

- (1) Where—
  - (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under paragraph 4 of Schedule 6 to the Finance Act 1965 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and
  - (b) that expenditure was defrayed out of borrowed money, and
  - (c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

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the sums so allowable under the said paragraph 4 shall include the amount of that interest charged to capital.

- (2) Paragraph 3 of Schedule 14 to the Finance Act 1967 (restriction on deductions where gain computed by reference to current use value of land) shall not restrict the sums allowable under subsection (1) above.

*Gilt-edged securities: restrictions on exemptions*

**270 Charge to tax on certain disposals of United Kingdom securities**

- (1) Subsection (1) of section 41 of the Finance Act 1969 (gilt-edged securities exempt from tax on capital gains) does not apply in the case of a disposal by a company of any specified securities unless the disposal occurs more than twelve months after the acquisition of the securities, and in this section "specified securities" has the same meaning as in the said section 41.
- (2) For the purposes of subsection (1) above—
- (a) if in consequence of a conversion on their redemption of any specified securities, those securities and a new holding of specified securities are, under paragraph 4(2) of Schedule 7 to the Finance Act 1965, as applied by paragraph 5 of that Schedule, to be treated as the same asset acquired as the converted securities were acquired, the date of acquisition of the new holding shall be deemed to be the date of the acquisition of the converted securities ; and
  - (b) the rules of identification in paragraph 8 of Schedule 7 to this Act shall apply, and
  - (c) in relation to a disposal of specified securities to which, by virtue of subsection (1) above, the said section 41(1) does not apply, the expenditure allowable under paragraph 4 of Schedule 6 to the Finance Act 1965 (cost of acquisition, etc.) shall, notwithstanding the provisions as to the pooling of securities in Schedule 7 to that Act, be determined by reference to the acquisition of the securities identified in accordance with paragraph (b) above.
- (3) Where under section 273 below the companies disposing of and acquiring an asset are to be treated as if the consideration were of such an amount that neither a gain nor a loss accrues on the disposal, the company acquiring the asset shall be treated for the purposes of subsections (1) and (2) above (and of the enactments referred to in subsection (2) above so far as applied for the purposes of subsection (1) above) as acquiring it at the time when the other acquired it.
- (4) In any case where—
- (a) at 3.30 p.m. on 15th April 1969 (in the following provisions of this section referred to as "the relevant time") or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company in such circumstances that any gain or loss on their disposal would, apart from section 41 of the Finance Act 1969 (and Schedule 9 to the Finance Act 1965), have been taken into account in determining the company's liability to corporation tax on chargeable gains, and
  - (b) those securities are subsequently appropriated by the company in such circumstances that if they were disposed of after the appropriation, any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax,

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then for the purposes of corporation tax any loss incurred by the company on the disposal of those securities shall not exceed the loss which would have been incurred on that disposal if the amount or value of the consideration for the acquisition of the securities had been equal to their market value at the time of the appropriation.

(5) In any case where—

- (a) at the relevant time or at any time thereafter (whether before or after the commencement of this Act) any specified securities were held by a company in such circumstances that any profit accruing on their disposal would be brought into account in computing the company's income for corporation tax, and
- (b) those securities are subsequently appropriated by the company in such circumstances that any gain accruing on their disposal would, by virtue of section 41 of the Finance Act 1969, be exempt from corporation tax on chargeable gains,

then for the purposes of corporation tax the company shall be treated as if, immediately before the appropriation, it had sold and repurchased the specified securities at their market value at the time of the appropriation.

## **271 Charge to tax on certain disposals of Guaranteed Stock issued at a discount**

- (1) Section 27(3) of the Finance Act 1965 (gains and losses on certain Guaranteed Stock disregarded for purposes of tax on chargeable gains if within the exempt price range) shall not apply in the case of a disposal by a company unless the disposal of the securities occurs more than twelve months after their acquisition.
- (2) Paragraph 5(2) of Schedule 7 to that Act (conversion of certain Guaranteed Stock) shall not apply to a disposal of, or of part of, the new holding unless the disposal occurs more than twelve months after the acquisition of the converted securities.
- (3) The rules of identification in paragraph 8 of Schedule 7 to this Act shall apply for the purposes of this section and where this section applies in relation to any disposal, paragraph 2(4) of Schedule 7 to the Finance Act 1965 (pooling of securities: exclusion of those subject to tax under Case VII of Schedule D) shall apply as if that disposal had been chargeable to income tax under Case VII of Schedule D (tax on short-term gains).
- (4) Where under section 273 below the companies disposing of and acquiring an asset are to be treated as if the consideration were of such amount that neither a gain nor a loss accrues on the disposal, the company acquiring the asset shall be treated for the purposes of the preceding provisions of this section as acquiring it at the time when the other acquired it.

### *Groups of companies*

## **272 Groups of companies: definitions**

- (1) For the purposes of this and the following sections of this Chapter—
  - (a) references to a company, subject to section 280(7) below, apply only to a company, as that expression is limited by subsection (2) below, which is resident in the United Kingdom;

- (b) a principal company, and all its 75 per cent. Subsidiaries form a group, and where a principal company is a member of a group as being itself a 75 per cent. subsidiary that group shall comprise all its 75 per cent. subsidiaries;
  - (c) " principal company" means a company of which another company is a 75 per cent. subsidiary;
  - (d) in applying the definition of " 75 per cent. subsidiary " in section 532 of this Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and
  - (e) " group " and " subsidiary " shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.
- (2) For the purposes referred to in subsection (1) above references to a company apply only to—
- (a) a company within the meaning of the Companies Act 1948 or the corresponding enactment in Northern Ireland, and
  - (b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and
  - (c) a registered industrial and provident society within the meaning of section 340 of this Act.
- (3) For the purposes referred to in subsection (1) above a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a 75 per cent. subsidiary of another company the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company, or one of which it is a 75 per cent. subsidiary, is the principal company, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.
- (4) For the purposes referred to in subsection (1) above the passing of a resolution or the making of an order, or any other act, for the winding-up of a company shall not be regarded as the occasion of that company, or of any 75 per cent. subsidiary of that company, ceasing to be a member of a group of companies.
- (5) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the Transport Act 1962 and the new authorities within the meaning of the Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any two or more such bodies charged at different times with the same or related functions were members of a group:
- Provided that this subsection shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter V of Part XII of this Act.
- (6) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within

the meaning of section 9 (1) of the Transport Act 1968 as if that Executive were a company within the meaning of those sections.

### **273 Transfers within a group**

- (1) Notwithstanding any provision in Part III of the Finance Act 1965 fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.
- (2) Subsection (1) above shall not apply where the disposal is—
  - (a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or
  - (b) a disposal of redeemable shares in a company on the occasion of their redemption ;and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under Schedule 7 to the Finance Act 1965 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in paragraph 3 of that Schedule) from that company, whether or not involving a reduction of capital.
- (3) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

### **274 Transfers within a group: trading stock**

- (1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.
- (2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.



## **275 Disposal or acquisition outside a group**

- (1) Where a company which is or has been a member of a group of companies disposes of an asset which it acquired from another member of the group at a time when both were members of the group, paragraph 6 of Schedule 6 to the Finance Act 1965 (restriction of losses by reference to capital allowances) shall apply in relation to any capital allowances made to the other member (so far as not taken into account in relation to a disposal of the asset by that other member), and so on as respects previous transfers of the asset between members of the group (but this shall not be taken as affecting the consideration for which an asset is deemed under section 273(1) above to be acquired).
- (2) Part II of Schedule 6 to the Finance Act 1965 (assets acquired before 6th April 1965) shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

## **276 Replacement of business assets by members of a group**

- (1) For the purposes of section 33 of the Finance Act 1965 (replacement of business assets) all the trades carried on by members of a group of companies shall be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).
- (2) Paragraph 16(2) of Schedule 19 to the Finance Act 1969 (special rules for depreciating assets) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in the said paragraph 16(2).

## **277 Tax on company recoverable from other members of group**

- (1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within six months from the date when it becomes payable by the company, then, if the tax so assessed included any amount in respect of chargeable gains.—
  - (a) a company which was at the time when the gain accrued the principal company of the group ; and
  - (b) any other company which in any part of the period of two years ending with that time was a member of the said group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset;may at any time within two years from the time when the tax became payable be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.

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(2) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—

- (a) from the company to which the chargeable gain accrued, or
- (b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

## **278 Company ceasing to be member of a group**

(1) If a company (in this section called the chargeable company) ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell—

- (a) on or after 6th April 1965, and
- (b) within the period of six years ending with the time when the company ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) Where two or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

- (a) the asset, or
- (b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of Part III of the Finance Act 1965 as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) For the purposes of this section—

- (a) two or more companies are associated companies if, by themselves, they would form a group of companies,
- (b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under section 33 of the Finance Act 1965, the chargeable gain accruing on a disposal of the asset

- is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,
- (c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.
- (5) If any of the corporation tax assessed on a company in consequence of this section is not paid within six months from the date when it becomes payable then—
- (a) a company which on the said date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and
- (b) a company which owned the asset on the said date, or when the chargeable company ceased to be a member of the group,
- may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax ; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.
- (6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.
- (7) The provision in subsection (3) above making the assumption that an asset is sold and re-acquired at market value shall, in accordance with paragraph 7(1) of Schedule 14 to the Finance Act 1967, have effect subject to the provisions of section 33 of that Act (current use value of land in Great Britain).
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the chargeable company ceases to be a member of the group in an accounting period ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

## **279 Shares in subsidiary member of a group**

- (1) This section has effect if a company (in this section called " the subsidiary ") ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section called " the chargeable company") which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell—
- (a) on or after 6th April 1965, and
- (b) within the period of six years ending with the date on which the subsidiary ceases to be a member of the group;
- and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group

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by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

- (2) The chargeable company shall be treated, for all the purposes of Part III of the Finance Act 1965, as if immediately before the earlier occasion it had sold, and immediately reacquired, the said shares at market value at that time.
- (3) If, before the subsidiary ceases to be a member of the group, the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been chargeable in consequence of this section may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.
- (4) If any of the corporation tax assessed on a company in consequence of this section, or in pursuance of subsection (3) above, is not paid within six months from the date when it becomes payable, then—
  - (a) a company which is on the said date, or was on the earlier occasion, the principal company of the group, and
  - (b) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,
 may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company, or as the case may be from the company assessed under subsection (3) above.
- (5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion, there shall be made all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section.
- (6) For the purposes of this section there is a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if paragraph 6 or paragraph 7 of Schedule 7 to the Finance Act 1965 (company amalgamations) applies to shares in a company so as to equate them with shares in or debentures of another company, and the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.
- (7) Where by virtue of paragraph 7 of the said Schedule 7 shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of their being so treated.
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the subsidiary ceases to be a member of the group in an accounting period of the chargeable company (or, as the case may be, of the company assessable under subsection (3) above) ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

*Losses attributable to depreciatory transactions*

**280 Transactions in a group**

- (1) This section has effect as respects a disposal of shares in, or securities of, a company (in this section referred to as an "ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 6th April 1965; and for this purpose "depreciatory transaction" means—
- (a) any disposal of assets at other than market value by one member of a group of companies to another, or
  - (b) unless the ultimate disposal occurred before 30th April 1969, any other transaction satisfying the conditions of subsection (2) below:

Provided that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

- (2) The conditions referred to in subsection (1)(b) above are—
- (a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and
  - (b) that the parties to the transaction were or included two or more companies which at the time of the transaction were members of the same group of companies.
- (3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 66 of the Companies Act 1948 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.
- (4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the depreciatory transaction :

Provided that if the person making the ultimate disposal is not a member of the said group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of the said group.

- (5) The inspector or the Commissioners shall make the decision under subsection (4) above on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction if and so far as the effect of the transaction was to increase the value of the assets of any other member of the group, but allowance may be made for any other transaction on or after 6th April 1965 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.
- (6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made,

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being a disposal not later than six years after the depreciable transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable having regard to the effect of the depreciable transaction on the value of those shares or securities at the time of their disposal:

Provided that the total amount of any one or more reductions in chargeable gains made by reference to a depreciable transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciable transaction. All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

(7) For the purposes of this section—

" securities " includes any loan stock or similar security whether secured or unsecured,

references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group,

a " group of companies " may consist of companies some or all of which are not resident in the United Kingdom.

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 23(4) of the Finance Act 1965 that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

## **281 Dividend stripping**

(1) The provisions of this section apply where one company (in this section referred to as " the first company ") has a holding in another company (in this section referred to as " the second company ") and the following conditions are fulfilled—

- (a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,
- (b) that the first company is not a dealing company in relation to the holding,
- (c) that a distribution is or has been made after 29th April 1969 to the first company in respect of the holding, and
- (d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding section 280 above shall apply in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section 273 above applies, as if the distribution were a depreciable transaction and, if the companies concerned are not members of a group of companies, as if they were:

Provided that the distribution shall not be treated as a depreciable transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(3) This section shall be construed as one with section 280 above.

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- (4) For the purposes of this section a company is " a dealing company " in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.
- (5) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—
  - (a) a company's holdings of different classes in another company shall be treated as separate holdings, and
  - (b) holdings of shares or securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (6) For the purposes of subsection (1) above—
  - (a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and
  - (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,and section 533 of this Act (definition of connected persons) shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words " or exercise control of " in each place where they occur there were inserted the words " or to acquire a holding in ".

## CHAPTER III

### CLOSE COMPANIES

#### *Meaning of close company*

#### **282 Meaning of close company**

- (1) For the purposes of the Corporation Tax Acts, a " close company " is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—
  - (a) to a company not resident in the United Kingdom, or
  - (b) to a registered industrial and provident society within the meaning of section 340(9) of this Act, or to a building society within the meaning of section 343 of this Act or any other company to which the said section 343 applies, or
  - (c) to a company controlled by or on behalf of the Crown, and not otherwise a close company, or
  - (d) to a company falling within subsection (4) or section 283 below.
- (2) Subject to subsection (4) and section 283 below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if, on the assumption that it is so, or on the assumption that it and any other such company or companies are so, more than half of any amount falling under this Chapter to be apportioned for the purposes of surtax in the case of the company could be apportioned among five or fewer participators, or among participators who are directors.

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- (3) For the purposes of this section—
- (a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and
  - (b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.
- (4) A company is not to be treated as a close company in any case where—
- (a) by reason of beneficial ownership of shares in the company, the control of it is in the hands of a company which is not a close company, or of two or more companies none of which is a close company, and
  - (b) it could only be treated as a close company as being under the control of five or fewer participators, and it cannot be so treated except by taking as one of the participators a company which is not a close company,
- but so that references in this subsection to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.

### **283 Certain companies with quoted shares not to be close companies**

- (1) Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—
- (a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and
  - (b) any such shares have within the preceding twelve months been the subject of dealings on a recognised stock exchange, and the shares have within those twelve months been quoted in the official list of a recognised stock exchange.
- (2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.
- (3) For the purposes of subsection (1) above, shares in a company shall be deemed to be beneficially held by the public if, and only if, they—
- (a) fall within subsection (4) below, and
  - (b) are not within the exceptions in subsection (5) below,
- and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.
- (4) Shares fall within this subsection (as being beneficially held by the public)—
- (a) if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or
  - (b) if held on trust for a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or
  - (c) if they are not comprised in a principal member's holding.
- (5) Shares shall not be deemed to be held by the public if they are held—



- (a) by any director or associate of a director of the company, or
- (b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or
- (c) by any associated company of the company, or
- (d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 302 below (definition of " control"), be attributed to that person under subsection (5) of that section (nominees).

- (6) For the purposes of this section—
  - (a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or more who possess equal percentages) who possess the greatest percentages, and
  - (b) a principal member's holding consists of the shares which carry the voting power possessed by him.
- (7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 302 below (definition of " control "), would be attributed to him under subsection (5) or (6) of that section (nominees, controlled companies and associates).
- (8) In this section " share " includes " stock ".

*Additional matters to be treated as distributions*

**284 Payments etc. to participators and associates**

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, in the Corporation Tax Acts " distribution ", in relation to a close company, includes unless otherwise stated—
  - (a) any annuity or other annual payment paid by the company to a participator, other than interest,
  - (b) any rent, royalty or other consideration paid or given by the company to a participator for the use of property other than money or, in the case of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), so much of any such consideration as represents more than a reasonable commercial consideration, and
  - (c) any such amount as is required to be treated as a distribution by subsection (2) below.

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- (2) Where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator:

Provided that this subsection shall not apply to expense incurred in or in connection with the provision of benefits or facilities for a person to whom section 196 of this Act applies as a director or employee of the company, or the provision for the spouse, children or dependants of any such person of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.

- (3) Any reference in subsection (2) above to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter; and section 197 of this Act (valuation of benefits in kind) shall apply for the purposes of that subsection as it applies for the purposes of section 196 of this Act, references to that subsection being substituted for references to section 196(1), and references to a body corporate including any company.
- (4) Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—
- (a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and
  - (b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.
- (5) The question whether one body corporate is a subsidiary of another for the purpose of subsection (4) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or
  - (c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.
- (6) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

- (7) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

**285 Interest paid to directors and directors' associates**

- (1) Subject to such exceptions as are mentioned in section 233(1) of this Act, this section has effect where in any accounting period any interest is paid by a close company to, or to an associate of, a person—
  - (a) who is a director of the close company, or of any company which controls, or is controlled by, the close company, and
  - (b) who has a material interest—
    - (i) in the close company, or
    - (ii) where the close company is controlled by another company, in that other company.
- (2) If the total amount so paid to any person in the accounting period exceeds the limit imposed in his case, the excess shall be a distribution made by the close company to that person.
- (3) The limit shall be worked out in the first instance as an overall limit applying to the aggregate of all interest which is within subsection (1) above and which was paid by the close company in the accounting period, and, where there are two or more different recipients, that overall limit shall be apportioned between them according to the amounts of interest paid to them respectively.
- (4) The overall limit shall be a sum equal to interest at 8 per cent. per annum on whichever is the less of—
  - (a) the total of the loans, advances and credits on which the interest within subsection (1) above was paid by the close company in the accounting period, or if that total was different at different times in the accounting period, the average total over the accounting period, and
  - (b) the nominal amount of the issued share capital of the close company plus the amount of any share premium account (or other comparable account by whatever name called) of the company, taking both amounts as at the beginning of the accounting period.
- (5) In this section " interest" includes any other consideration paid or given by the close company for the use of money advanced, or credit given, by any person, and references to interest " paid " shall be construed accordingly.
- (6) This section has effect subject to section 284(6) above, and for the purposes of this section a person has a material interest in a company—
  - (a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without any such other associates, is the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent. of the ordinary share capital of the company, or
  - (b) if, on an amount equal to the whole distributable income of the company falling under this Chapter to be apportioned for the purposes of surtax, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

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*Charges to tax in connection with loans and covenants*

**286 Loans to participators etc.**

- (1) Subject to the following provisions of this section, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to income tax on the grossed up equivalent of the loan or advance.
- (2) For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—
  - (a) that person incurs a debt to the close company, or
  - (b) a debt due from that person to a third party is assigned to the close company, and then the close company shall be regarded as making a loan of an amount equal to the debt:

Provided that paragraph (a) above shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

- (3) This section shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, under a bona fide scheme for assisting the purchase of houses by members of the staff of the close company, or of any associated company of the close company, if—
  - (a) the loan is used for the purpose of purchasing a dwelling which is or will be the borrower's only or main residence, and
  - (b) neither the amount of the loan, nor that amount when taken with any other outstanding loans made for the same purpose, by the close company or any of its associated companies to the borrower, or to the wife or husband of the borrower, exceeds £10,000, and
  - (c) the borrower works full-time for the close company, or any of its associated companies, and
  - (d) the borrower does not have a material interest in the close company or in any associated company of the close company.
- (4) Tax assessed by virtue of this section shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (5) Where, after a company has paid the amount assessed on it under this section in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, the amount paid by the company, or a proportionate part of it, shall be repaid.

Relief under this subsection shall be given on a claim, which must be made within six years from the end of the year of assessment in which the repayment is made.

- (6) For the purposes of this section and section 287 below, the grossed up equivalent of an amount is such a sum as, after deduction of income tax at the standard rate, is equal to that amount, and shall be computed by reference to the standard rate for the year of assessment in which the loan or advance is made or, as the case may be, the debt is wholly or partly released or written off.

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- (7) Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—
- (a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and
  - (b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,
- then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income for the purposes of surtax of the participator or associate an amount not less than the grossed up equivalent of the loan or advance, this section shall apply as if the loan or advance had been made to him.
- (8) In subsections (1) and (7)(b) above, the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity, and to a company not resident in the United Kingdom.
- (9) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company; and section 285(6) above shall apply for the purpose of determining whether a person has, for the purpose of subsection (3) above, a material interest in a company.

#### **287 Effect of release, etc., of debt in respect of loan under s. 286**

- (1) Subject to the following provisions of this section where a company is assessed or liable to be assessed under section 286 above in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of it, the person to whom it was made shall be treated for purposes of surtax as having then received an amount of income equal to the grossed up equivalent of the amount so released or written off.
- (2) If the loan or advance referred to in subsection (1) above was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and if it is due from him as personal representative within the meaning of Part XV of this Act, the amount treated as received by him shall accordingly be, as regards surtax, included for the purposes of that Part in the aggregate income of the estate).
- (3) This section shall not have effect in relation to a loan or advance made to a person if any sum falls in respect of the loan or advance to be included in his income by virtue of section 451 of this Act (sums paid to settlor otherwise than as income), except in so far as the amount released or written off exceeds the sums previously falling to be so included (without the addition for income tax provided for by subsection (5) of that section).
- (4) This section shall be construed as one with section 286 above.

#### **288 Covenants by participators**

- (1) Where, in respect of any payment made or consideration given by a company, any sum falls by virtue of section 34 of this Act (charge of surtax on consideration for certain restrictive covenants etc.) to be included in an individual's total income for the

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purposes of surtax, and, at the time when the payment is made or the consideration is given, the company is a close company and the individual is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to income tax on the sum falling to be included in the individual's income as aforesaid, at the standard rate for the year of assessment in which the payment is made or the consideration is given.

- (2) Tax assessed by virtue of subsection (1) above shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (3) Where subsection (1) above would apply to any payment or consideration if the condition that the company is a close company and the individual a participator in it or an associate of a participator were satisfied at the time when the payment is made or the consideration is given, that subsection shall apply if either—
  - (a) at that time the individual holds or is about to hold an office or employment with the company and the condition is satisfied within two years afterwards, or
  - (b) at that time the individual holds or has held an office or employment with the company and the condition has been satisfied within two years previously.
- (4) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

#### *Charges to tax in respect of shortfall*

### **289 Shortfall in distributions**

- (1) If in any accounting period of a close company there is a shortfall in the company's distributions, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company, an amount equal to the income tax for which the company would be liable to account under section 232(2) of this Act on a distribution equal in amount (before deduction of income tax) to the shortfall and made twelve months after the end of the accounting period (income tax having been deducted).
- (2) Tax assessed by virtue of subsection (1) above shall, subject to any appeal against the assessment, be due within fourteen days after the issue of the notice of assessment.
- (3) Where a company is in respect of any year of assessment: assessed under this section in respect of a shortfall in distributions, and there is in that year a surplus of franked investment income (including any amount carried forward from an earlier year), the company may, by a claim made within two years from the end of that year of assessment, require that the shortfall shall be set off as far as may be against the surplus, and, in that event, the shortfall and the surplus shall each (as regards the company) be treated as reduced by the amount of the set-off; and the set-off shall, so far as it reduces the shortfall, be effected by discharge of the tax assessed under this section by reference to the shortfall.
- (4) Effect shall be given to a claim under subsection (3) above in priority to any claim for the same year under section 254 or section 255 of this Act, but the set-off shall be made as far as may be against any part of the surplus which has been carried forward from an earlier year of assessment.

- (5) Where a company is assessed under this section in respect of a shortfall in distributions for any accounting period, then (so long as the company remains a close company) it may for any later accounting period for which there is no such shortfall make a claim within six years from the end of the later period requiring that the shortfall of the earlier period, or so much of it as has not been dealt with under this subsection, shall, in determining the income tax payable by the company in respect of distributions for the later period or, as the case may be, in arriving at any surplus of franked investment income, be deducted rateably from the distributions made by the company for the later period :

Provided that no deduction shall be made under this subsection from the distributions for any accounting period so as to reduce those distributions below the required standard.

- (6) Subject to subsections (4) and (5) of section 294 below, the preceding provisions of this section shall, notwithstanding the winding up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (7) So much of section 247(8) of this Act (adjustments where true accounting period is established on appeal) as extends the time within which assessments may be made shall apply to assessments to tax under this section.

## **290 Determination of shortfall: required standard**

- (1) For the purposes of section 289 above, the shortfall in a company's distributions for any accounting period is, subject to the following provisions of this section, the amount (if any) by which the distributions for the period fall short of the required standard; and subject to those provisions, the required standard is the distributable income for the period, less so much of that income (not exceeding, in the case of a company which is neither a trading company nor a member of a trading group, the amount of the estate or trading income) as the company shows could not be distributed without prejudice to the requirements of the company's business.
- (2) In no case shall the required standard exceed the company's distributable investment income for the period plus 60 per cent. of the estate or trading income for the period.
- (3) In arriving at the required standard for any accounting period—
- (a) regard shall be had not only to the current requirements of the company's business, but also to such other requirements as may be necessary or advisable for the maintenance and development of that business but, for this purpose, the provisions of section 293 below shall apply;
  - (b) the amount of the estate or trading income shall be taken at the amount included in respect of it in the distributable income.
- (4) Where a company is subject to any restriction imposed by law as regards the making of distributions, any shortfall in its distributions for an accounting period shall be disregarded to the extent to which the company could not make distributions up to the required standard without contravening that restriction.
- (5) In the application of subsection (2) above to a trading company, the estate or trading income for an accounting period, if it is less than the relevant maximum amount shall be treated as reduced by one-fifth of the amount required to make it up to that

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relevant maximum amount or, if it is less than the relevant minimum amount, shall be disregarded.

- (6) The relevant maximum and minimum amounts referred to in subsection (5) above shall be determined as follows:—
- (a) where the company has no associated company in the accounting period, those amounts are £9,000 and £1,500 respectively;
  - (b) where the company has one or more associated companies in the accounting period, the relevant maximum amount is £9,000 divided by one plus the number of those associated companies and the relevant minimum amount is £1,500 divided by one plus the number of those associated companies.
- (7) In applying subsections (5) and (6) above to any accounting period of a trading company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded; and for the purposes of this section a company is to be treated as an "associated company" of another at a given time if at that time one of the two has control of the other or both are under the control of the same person or persons.
- (8) In determining how many associated companies a trading company has got in an accounting period or whether a trading company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.
- (9) For an accounting period of less than twelve months the relevant maximum and minimum amounts determined in accordance with subsection (6) above shall be proportionately reduced.
- (10) The provisions of this section have effect subject to section 294 below.

**291 Distributions to be taken into account, and meaning of " distributable income " etc.**

- (1) For the purposes of the provisions of this Chapter relating to shortfalls in the distributions of a close company, the distributions for an accounting period shall be taken to consist of—
- (a) any dividends which are declared in respect of the period and are paid during the period or within eighteen months after it, and
  - (b) all distributions made in the period except dividends which, in relation to any previous period, would fall under paragraph (a) above:

Provided that, where a period of account is not an accounting period, dividends which, if it were an accounting period, would be treated under paragraph (a) above as distributions for that accounting period shall be apportioned to any accounting period or part of an accounting period falling within the period of account in proportion to the distributable income of each such period or part.

- (2) For the purposes of the provisions referred to in subsection (1) above, the " distributable income " of a company for an accounting period shall be the amount of its distributable profits for the period exclusive of the part attributable to chargeable gains, and, for the purposes of this subsection—



- (a) the "distributable profits" of a company for an accounting period shall be the amount on which corporation tax falls finally to be borne, less the amount of that tax, but with additions equal to—
    - (i) any franked investment income, less the amount of any relief given against it under section 254 or section 255 of this Act, and
    - (ii) any group income,
  - (b) the part of a company's distributable profits attributable to chargeable gains shall be taken to be the amount of the chargeable gains on which corporation tax is finally borne less the amount of that tax, and
  - (c) the amount on which corporation tax falls finally to be borne (but not the amount of that tax) shall be computed as if section 254 of this Act did not include subsection (5) or subsection (6) of that section (and as if section 255 of this Act did not apply the said subsection (5)).
- (3) For the purposes of the provisions referred to in subsection (1) above, the "distributable investment income" of a company for an accounting period shall be the amount of the distributable income, exclusive of the part attributable to estate or trading income, and less whichever is the smaller of—
- (a) 10 per cent. of the estate or trading income, and
  - (b) £200 or, if the accounting period is of less than twelve months, a proportionately reduced amount.
- (4) For the purposes of this Chapter, the "estate or trading income" of a company means—
- (a) income which is not investment income for the purposes of section 292(1) below, and
  - (b) income which is chargeable to tax under Schedule A or Schedule B, and income (other than yearly or other interest) which is chargeable to tax under Schedule D, and which arises from the ownership or occupation of land (including any interest in or right over land) or from the letting furnished of any building or part of a building.
- (5) The amount for part of an accounting period of any description of income referred to in subsections (2) to (4) above shall be a proportionate part of the amount for the whole period, and, in determining the amount for any period of any description of income, any deduction from the company's profits for charges on income, expenses of management or other amounts deductible from profits of more than one description shall be treated as made from such profits, and in such proportions from those profits, as is appropriate.

## **292 Meaning of "trading company" and "member of a trading group"**

- (1) For the purposes of this Chapter, a "trading company" is any company which exists wholly or mainly for the purpose of carrying on a trade, and any other company whose income does not consist wholly or mainly of investment income, that is to say, income, which, if the company were an individual, would not be earned income; but for this purpose any amount which is apportioned to a company under section 296 below shall be deemed to be income of the company and to be investment income.
- (2) For the purposes of this Chapter, a company is to be treated as a "member of a trading group" if, but only if—

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- (a) it exists wholly or mainly for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade, or
- (b) it is under the control of another company resident in the United Kingdom and not itself under the control of a third company, and it exists wholly or mainly for the purpose of a trade or trades carried on by that other company or by a group which, consisting of that other company and a company or companies also under its control and resident in the United Kingdom, exists wholly or mainly for the purpose of carrying on the said trade or trades:

Provided that a company shall not be treated as a member of a trading group by reason of any company having the control of another if that control is exercised through a company which is not resident in the United Kingdom or through a company whose control depends on a holding a profit on the sale of which would be treated as a trading receipt of the company.

### **293 Requirements of the company's business**

- (1) For the purposes of section 290(3) above there shall be regarded as income available for distribution and not as having been applied, or as being applicable, to the current requirements of a company's business, or to such other requirements as may be necessary or advisable for the maintenance and development of that business—
  - (a) any sum expended or applied, or intended to be expended or applied, out of the income of the company, otherwise than in pursuance of an obligation entered into by the company before 4th August 1914—
    - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company, or
    - (ii) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor, or
    - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property, or
    - (iv) in redemption or repayment of any share or loan capital or debt (including any premium thereon) issued or incurred otherwise than for adequate consideration, and
  - (b) any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction, and
  - (c) in the case of a company which is neither a trading company nor a member of a trading group, any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.
- (2) For the purposes of subsection (1)(a)(iv) above, share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—
  - (a) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon), or

- (b) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in paragraph (a) of this subsection or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration;

and references in the preceding provisions of this section to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

## 294 Cessations and liquidations

- (1) For the purposes of sections 289 and 290 above, where a close company ceases to carry on the trade, or the business of holding investments, in which its activities wholly or mainly consisted, then, subject to subsection (2) below, but notwithstanding any other provision limiting the required standard of distributions, the required standard for any accounting period in which that event occurs, or which ends in or with the twelve months ending with that event, shall be calculated on the whole, instead of on 60 per cent. of the estate or trading income (if any) taken into account, and without any deduction in respect of the requirements of the business.
- (2) Where subsection (1) above applies for an accounting period and the company shows that it could not make distributions up to the required standard without prejudice to the claims of creditors (excluding those mentioned in subsection (3) below), then, for the purposes of section 289 above so much of the shortfall as the company shows could not be avoided without prejudice to those claims shall be disregarded.
- (3) The creditors to be excluded for the purposes of subsection (2) above are all participators and associates of participators, and all creditors in respect of debts originally created in favour of or due to a person who was then a participator or associate of a participator:

Provided that a creditor is not to be excluded in respect of any debt which either—

- (a) arose in the ordinary course of the company's trade or the company's business of holding investments and also in the ordinary course of a trade or profession of the creditor or, as the case may be, of the participator or associate who was the original creditor, or
- (b) is a debt for remuneration chargeable to income tax under Schedule E, or
- (c) is a debt for any rent or other payment due for the use of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), and not representing more than a reasonable commercial consideration for that use.
- (4) Where a resolution is passed, or an order is made, for the winding up of a close company, or where any other act is done for a like purpose in the case of a winding up otherwise than under the Companies Act 1948, subsections (1) to (3) above shall apply for any accounting period ending in or with the twelve months ending with the passing of the resolution or other event, or for any later accounting period, as they apply, in a case falling within subsection (1) above, for an accounting period in which a close company ceases to carry on a trade.

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- (5) Where an event mentioned in subsection (4) above occurs, then any assessment on the company in respect of a shortfall—
- (a) for an accounting period ending in or with the twelve months ending with the said event shall be an assessment as for a distribution made immediately before that event,
  - (b) for any later accounting period shall be an assessment as for a distribution made immediately before the end of that period,
- and the amount due under the assessment shall be recoverable accordingly.

## **295 The shortfall charge: protection by transmission of accounts**

- (1) A close company may, at any time after the general meeting at which the accounts for any period of account are adopted, forward to the inspector a copy of those accounts, together with a copy of the report (if any) of the directors for that period and such further information (if any) as it may think fit, and may request the inspector to proceed under this section in relation to any accounting period comprised in that period of account:

Provided that this subsection shall not apply if the company is neither a trading company nor a member of a trading group and has no estate or trading income.

- (2) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, then, subject to subsection (3) below, he shall, within three months after receipt of the request, intimate to the company whether or not he proposes to make an assessment on the company in respect of the accounting period under section 289 above.
- (3) On receiving a request made in accordance with subsection (1) above, the inspector may, not later than three months after the receipt of the request, call on the company to furnish him with such further particulars as he may reasonably require; and, if the inspector does so, the time for giving the intimation required by subsection (2) above shall not expire before three months after he has been furnished with those particulars.
- (4) Where the inspector receives a request made in accordance with subsection (1) above in relation to any accounting period, and does not within the time limited by subsections (2) and (3) above intimate his intention to make an assessment in respect of the period, no such assessment shall be made unless either—
- (a) the information accompanying the request, and any further particulars furnished to the inspector in connection therewith, are not such as to make full and accurate disclosure of all facts and considerations which are material to be known to him, or
  - (b) within twelve months of the end of the period any of the provisions of section 294 above has effect in relation to the company.

### *Surtax apportionments*

## **296 Apportionment for surtax of close company's income**

- (1) Subject to the provisions of this section, the income of a close company for any accounting period may, for the purposes of surtax, be apportioned by the Board among the participators, and any amount apportioned to a close company, whether

originally or by one or more sub-apportionments under this provision, may be further apportioned among the participators in that company.

- (2) For the purposes of an apportionment under this section, there shall be added to the amount of the income to be apportioned any amounts which were deducted in respect of annual payments, not being interest, in arriving at the company's distributable income (as defined in section 291(2) above) for the accounting period and which, in the case of an individual, would not have been deductible or would have been treated as his income in computing his total income for surtax.
- (3) Subject to subsection (2) above and (in the case of non-trading companies) to section 298(2) below.—
  - (a) an apportionment shall not be made under this section of a company's income for an accounting period unless an assessment is made on the company under section 289 above in respect of a shortfall in its distributions for that period, and
  - (b) the amount apportioned shall be the amount of the shortfall taken into account in making that assessment (and for this purpose a set-off of a surplus of franked investment income under section 289(3) above shall not be taken as reducing the amount of the shortfall),and an assessment under the said section 289, when it becomes final and conclusive, shall also be final and conclusive for the purposes of this subsection.
- (4) Subject to subsection (5) below and (in the case of non-trading companies) to section 298 below, any apportionment under this section, including any sub-apportionment of an amount directly or indirectly apportioned to a company, shall be made according to the respective interests in the company in question of the participators.
- (5) In determining for the purposes of subsection (4) above the respective interests of the participators, the Board may if it seems proper to them to do so attribute to each participator an interest corresponding to his interest in the assets of the company available for distribution among the participators in the event of a winding up.
- (6) This section shall, notwithstanding the winding-up of a company, or the passing of any resolution or the making of any order or anything else done for the winding up of a company, continue to apply as if the company were not being wound up.
- (7) Notice of an apportionment under this section shall be given by serving on the company a statement showing the total amount apportioned and, as the Board think fit, either the amount apportioned to each participator or the amount apportioned to each class of shares.
- (8) A company which is aggrieved by any notice of apportionment under this section shall be entitled to appeal to the Special Commissioners on giving notice to an officer of the Board within thirty days after the date of the notice; and subject to that an apportionment under this section shall be final and conclusive.
- (9) If a company fails or refuses, on being required to do so by the Board, to furnish a statement of its income for any accounting period apportionable under this section, or renders a statement with which the Board are not satisfied, the Board may make an estimate of that income to the best of their judgment.

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- (10) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board under subsection (5) or subsection (9) above.

### **297 Consequences of apportionment under s. 296**

- (1) Where an apportionment of income of a close company has been made under section 296 above, surtax shall be assessed and charged in respect of the sum so apportioned in accordance with the following provisions of this section.
- (2) Subject to subsection (4) below, and (in the case of non-trading companies) to section 298(3) below, the income apportioned to a participator in a company shall for the purposes of surtax form part of his total income, and subject to section 529 of this Act shall be deemed to be the highest part of that income and to have been received by him at the end of the accounting period to which the apportionment relates.
- (3) Any amount apportioned to the personal representatives of a deceased person shall be treated as included as regards surtax in the aggregate income of the estate for the purposes of Part XV of this Act.
- (4) No individual shall be charged to surtax by virtue of any apportionment unless the sum or, where there is a sub-apportionment, the aggregate sum on which he is so chargeable amounts either to £100 or more or to 5 per cent. or more of the amount apportioned.
- (5) Any surtax chargeable under this section in respect of the amount of the income of a close company apportioned to any participator shall be assessed upon that participator in the name of the company and, subject as hereinafter provided, shall be payable by the company, and all the provisions of the Income Tax Acts relating to surtax assessments and the collection and recovery of surtax shall, with any necessary modification, apply to surtax assessments and to the collection and recovery of surtax charged under this section.
- (6) A notice of charge to surtax under this section shall in the first instance be served on the participator on whom the tax is assessed, and if the participator does not within twenty-eight days from the date of the notice elect to pay the tax, a notice of charge shall be served on the company, and the tax shall thereupon become payable by the company:

Provided that—

- (a) nothing in this subsection shall prejudice the right to recover from the company the surtax charged in respect of any participator who has elected as aforesaid but who fails to pay the tax by 1st January in the year next following the year of assessment or within twenty-eight days of the date on which he so elected, whichever is the later, and
- (b) where a notice of charge is served on a company and the tax thereupon becoming payable is not paid by the company before the expiry of three months from the date of service or before 2nd January in the year next following the year of assessment, whichever is the later, the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the participator on whom it was assessed.
- (7) Where, in consequence of a sub-apportionment, subsections (5) and (6) above apply in relation to a participator in a company other than the company whose income

is apportioned, references in those subsections to the company shall be taken as references to the company whose income is apportioned.

(8) Where—

- (a) any undistributed income which has been assessed and charged to surtax under this section is subsequently distributed, and
- (b) on the occasion of its distribution the distributions for the accounting period exceed the required standard,

a fraction of any amount to which an individual is entitled shall be deemed not to form part of his total income for the purposes of surtax; and the said fraction is

$$\frac{A}{B}$$

where—

A is the said excess, and

B is the whole distributions for the period.

- (9) Sections 34(1) and 37(1) (time limits for assessment) and section 33(1) (relief for error or mistake) of the Taxes Management Act 1970 shall apply in relation to surtax assessed under this section as if for references to six years there were substituted references to seven years.

## **298 Apportionment of income of non-trading companies**

- (1) The provisions of this section and section 299 below apply in relation to a close company which is not a trading company, and in those provisions such a company is referred to as a " non-trading company ".
- (2) There may be apportioned under section 296 above, if the Board see reason for it, the whole of a non-trading company's income for an accounting period up to the amount of the required standard (notwithstanding that there has been no shortfall in distributions for that period), together with any addition to be made under subsection (2) of that section, but with such reduction, if any, as may be just in respect of distributions made for the period to persons other than participators and associates of participators :
- Provided that for this purpose the required standard shall be treated as reduced by so much of any shortfall in the distributions for the period as would under section 290(4) above or, where subsection (1) of section 294 above applies, under subsection (2) of that section, be disregarded in an assessment made in respect of that shortfall.
- (3) Where an apportionment is made by virtue of subsection (2) above, an individual shall not be charged to surtax on an amount treated in consequence of the apportionment or any sub-apportionment as being his income except in so far as it exceeds the amount which, apart from the apportionment, falls in respect of distributions made by the company in the accounting period to be included in the statement of total income to be made by him for the purposes of surtax.
- (4) For the purposes of section 296(4) above, a loan creditor shall be deemed to have an interest in any company which is a non-trading company to the extent that the income to be apportioned, or assets representing it, has or have been expended or applied, or is or are available to be expended or applied, in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor.

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- (5) In the case of a non-trading company where, by virtue or in consequence of any settlement, a loan creditor has been or could be required by some other person (in this subsection referred to as " the beneficiary ") to pay to the beneficiary the whole or a part of any sums which have been or might be paid to the loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole or a part of any sums or assets representing (directly or indirectly) any such sums, then—
- (a) if the requirement related, or could relate, to the whole of the sums or assets in question, the beneficiary and not the loan creditor shall be deemed for the purposes of section 296 above to be a participator in the company and, for the purposes of subsection (4) of that section, to have the interest in the company which the loan creditor would, but for this provision, be deemed to have in respect of that loan capital or debt; and
  - (b) in any other case, the beneficiary, as well as the loan creditor, shall be deemed to be a participator in the company for the purposes of section 296 above and, for the purposes of subsection (4) of that section, the interest which the loan creditor is deemed to have in the company in respect of that loan capital or debt shall be divided between them in such manner as the Board think fit.

In this subsection " settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

- (6) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under subsection (5) above.

## **299 Supplementary provisions as to apportionment of income of non-trading companies**

- (1) If, in the case of a non-trading company, the Board are of opinion that any person who is not a participator in the company for the purposes of section 296 above is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, they may, if they think fit, treat him as a participator in the company for those purposes.
- (2) In apportioning the income of a non-trading company under section 296 above—
- (a) to any person who is treated as a participator in the company by virtue of subsection (1) above, or
  - (b) to any person who is a participator in the company but has no relevant interests in the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit, or
  - (c) to any person who is a participator in the company and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company considered in relation to the value for those purposes of the relevant interests of other persons therein,

the Board may apportion to him such part of the income of the company as appears to them to be appropriate, and may adjust as they may consider necessary the apportionment of the remainder of the company's income.



- (3) Subsection (2) above applies to the sub-apportionment of an amount directly or indirectly apportioned to a non-trading company under section 296 above as it applies to an apportionment of the company's income.
- (4) For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able to do so by any means whatsoever, whether he has any rights at law or in equity in that behalf or not, and the Board may draw the inference that a person is likely to be able to secure that income or assets of a company will be applied for his benefit or, as the case may be, will be so applied to a greater extent than is represented in the value for apportionment purposes of any relevant interests which he has in the company, if and only if they are satisfied—
- (a) that he has, directly or indirectly, transferred assets to the company the value of which is not represented, or is not adequately represented, in the value for apportionment purposes of any relevant interests which he has in the company, and
  - (b) that the persons who, whether as directors or share holders or in any other capacity have, or will at any material time have, powers or rights affecting the disposal or application of the income or assets of the company are likely to act in accordance with his wishes, or that he is able to secure that persons who at the material times will have such powers or rights will be persons likely to act in accordance with his wishes.
- (5) Where the Board have, under subsection (2) above, apportioned income of a company for any accounting period, and the amount apportioned to any participator is less than the amount of income distributed to that participator by the company in respect of the said period in such manner that the amount distributed would, apart from this subsection, fall to be included in the statement of total income to be made by that participator for the purposes of surtax, the excess of the amount so distributed over the amount apportioned to that participator shall be deemed not to form part of the participator's total income for tax purposes:
- Provided that, where notice of appeal is given against the apportionment, the reference in this subsection to the amount apportioned to the participator shall be construed as a reference to the amount apportioned to him on the final determination of the appeal.
- (6) For the purposes of this section—
- (a) references to a person shall, in the case of an individual, be deemed to include the wife or husband of the individual,
  - (b) " assets " includes property or rights of any kind, and " transfer ", in relation to rights, includes the creation of those rights, and
  - (c) " relevant interests " means, in relation to a person connected in any way with a company, interests by reference to which income of the company could be apportioned to him under section 296 of this Act apart from this section, and " value for apportionment purposes " means, in relation to any relevant interests in any company, the value falling to be put thereon in apportioning the income of the company under the said section 296.
- (7) On an appeal to the Special Commissioners, the Commissioners shall have jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

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### **300 Apportionment of interest paid by certain non-trading companies**

- (1) Subject to the provisions of this section, all interest paid by a close company in any accounting period shall be apportioned under section 296 above as if the interest were income of the close company for the accounting period.
- (2) Subsection (1) above shall not apply to a company—
  - (a) if it is a trading company, or
  - (b) if it is a member of a trading group, or
  - (c) if the whole, or substantially the whole, of its income is of one or more of the following descriptions, that is—
    - (i) estate or trading income,
    - (ii) interest, and dividends or other distributions, received from a 51 per cent. subsidiary of it (both companies being bodies corporate) if the subsidiary is itself within any of paragraphs (a), (b) and (c) of this subsection.
- (3) Subsection (1) above shall not apply—
  - (a) to interest which would be eligible for relief under section 57 or section 62 of this Act (loans for purchase or improvement of land and certain pre-1970 loans) if paid by an individual, or
  - (b) to interest which is money wholly and exclusively laid out or expended for the purposes of a trade carried on by the company.
- (4) If any amount of interest apportionable under subsection (1) above is interest paid to a participator in the close company, the amount apportionable to that participator by virtue of subsection (1) above shall be reduced by the first-mentioned amount (and without requiring the reduction to be reflected in the amount apportioned to any other person).
- (5) Section 296(3) above has effect subject to the provisions of this section, and an amount apportionable by virtue of this section shall be in addition to amounts (if any) apportionable under section 296 above without this section.
- (6) In determining under section 296 above and the provisions applying for the purposes of that section the person to whom any amount is to be apportionable by virtue of this section, any interest which any person possesses as a loan creditor shall be disregarded (but without prejudice to the making of an apportionment to him in any other capacity).
- (7) In determining for the purposes of subsection (2)(c)(ii) above whether one body corporate is a 51 per cent. subsidiary of another, that other shall be treated as not being the owner—
  - (a) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom, or
  - (b) of any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

### *Information*

#### **301 Powers of Board and inspectors to obtain information**

- (1) The Board may, by notice in writing, require any company which is, or appears to them to be, a close company to furnish them, within such time (not being less than twenty-eight days) as may be specified in the notice, with such particulars as they think necessary for the purposes of sections 296 to 300 above.
- (2) If for the purposes of those sections any person in whose name any shares are registered is so required by notice in writing by the Board, he shall state whether or not he is the beneficial owner of the shares and, if not the beneficial owner of the shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.
- (3) Subsection (2) above shall apply in relation to loan capital as it applies in relation to shares.
- (4) The Board may, for the purposes of the said sections, by notice in writing require—
  - (a) any company which appears to them to be a close company to furnish them with particulars of any bearer securities issued by the company, and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person, and
  - (b) any person to whom securities were issued as afore said, or to or through whom such securities were subsequently sold or transferred, to furnish them with such further information as they may require with a view to enabling them to ascertain the names and addresses of the persons beneficially interested in the securities.

In this subsection "securities " includes shares, stocks, bonds, debentures and debenture stock, and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor of the company.

- (5) Any power which the Board may exercise under this section for the purposes of sections 296 to 300 of this Act may be exercised by the inspector for the purposes of any of sections 286 to 295 of this Act.

### *General definitions*

#### **302 Meaning of " associated company " and " control "**

- (1) For the purposes of this Chapter, other than section 290 above, a company is to be treated as another's " associated company " at a given time if, at that time or at any time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.
- (2) For the purposes of this Chapter, a person shall be taken to have control of a company—
  - (a) if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses, or is entitled to acquire, the greater part of the share capital or voting power in the company, or

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- (b) if he possesses, or is entitled to acquire, either—
    - (i) the greater part of the issued share capital of the company, or
    - (ii) such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed, or
    - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding up, would be available for distribution among members, or
  - (c) if in the event of a winding up he would be entitled to the greater part of the assets available for distribution among members.
- (3) Where two or more persons together satisfy any of the conditions in paragraphs (a) to (c) of subsection (2) above, they shall be taken to have control of the company.
- (4) In subsection (2) above " member " includes any person having a share or interest in the capital or income of the company, and, for the purposes of that subsection, a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire ; and, for the purposes of paragraphs (b) (iii) and (c) of that subsection, any loan creditor may be treated as a member (and the references to share capital as including loan capital).
- (5) For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.
- (6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection ; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

### **303 Meaning of "participator", "associate", "director" and "loan creditor"**

- (1) For the purposes of this Chapter, a " participator " is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—
- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
  - (b) any loan creditor of the company,
  - (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing " distributions " without regard to section 284 or section 285 of this Act) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption, and
  - (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

- (2) The provisions of subsection (1) above are without prejudice to any particular provision of this Chapter requiring a participator in one company to be treated as being also a participator in another company.
- (3) For the purposes of this Chapter " associate " means, in relation to a participator—
- (a) any relative or partner of the participator,
  - (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor (" settlement" and " settlor" having here the same meaning as in section 454(3) of this Act), and
  - (c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, any other person interested therein, and has a corresponding meaning in relation to a person other than a participator:

Provided that paragraph (c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

- (i) if the trust relates exclusively to a fund or scheme approved under section 208 or section 222 (superannuation funds and retirement schemes) of this Act, or to a scheme the whole of which is an " excepted provident fund or staff assurance scheme or other similar scheme" as defined in section 224 of this Act, or
- (ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

and in applying paragraph (ii) of this proviso, any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

- (4) In subsection (3) above " relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (5) For the purposes of this Chapter " director " includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—
- (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
  - (b) is remunerated out of the funds of that trade or business, and
  - (c) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.
- (6) In subsection (5)(c) above, the expression " either on his own or with one or more associates " requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own, and in paragraph (ii) of the proviso to subsection (3) above the expression " either on his own or with his relatives " has a corresponding meaning.
- (7) For the purposes of this Chapter " loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

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- (a) for any money borrowed or capital assets acquired by the company, or
- (b) for any right to receive income created in favour of the company, or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon),

or in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.