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SCHEDULES :

SCHEDULE 10

Section 38.

VALUATION

PART I

—GENERAL

Liabilities

- 1 (1) Except as otherwise provided by this Part of this Act, in determining the value of a transferor's estate at any time his liabilities at that time shall be taken into account.
 - (2) The liabilities to be taken into account in determining the value of a transferor's estate immediately after a transfer of value include his liability for tax on the value transferred but not his liability (if any) for any other tax or duty resulting from the transfer ; and in computing his liability for tax—
 - (a) no allowance shall be made for the fact that the tax will not be due immediately ; and
 - (b) any tax recovered otherwise than from the transferor or from a person liable for it under section 25(8) of this Act shall be treated as having been paid in discharge of a liability in respect of which the transferor had a right to reimbursement.
 - (3) Except in the case of a liability imposed by law, a liability incurred by the transferor shall be taken into account only to the extent that it was incurred for a consideration in money or money's worth.
 - (4) Subject to sub-paragraph (2) above, where a liability falls to be discharged after the time at which it is to be taken into account it shall be valued as at the time at which it is to be taken into account.
 - (5) A liability in respect of which there is a right to reimbursement shall be taken into account only to the extent (if any) that reimbursement cannot reasonably be expected to be obtained.
- 2 A liability which is an incumbrance on any property shall, so far as possible, be taken to reduce the value of that property.
- 3 Where a liability taken into account is a liability to a person resident outside the United Kingdom which neither—
 - (a) falls to be discharged in the United Kingdom ; nor
 - (b) is an incumbrance on property in the United Kingdom,it shall, so far as possible, be taken to reduce the value of property outside the United Kingdom.

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Tax on capital gains borne by donee

- 4 (1) Where a chargeable transfer is or includes a disposal of an asset and on the disposal a gain accrues to the transferor for the purposes of Part III of the Finance Act 1965, then, if—
- (a) the whole or part of the gain is a chargeable gain or a development gain ; and
 - (b) the whole or part of any capital gains tax or income tax chargeable on the gain is borne by the donee (within the meaning of paragraph 19 of Schedule 7 to that Act);
- the amount of the tax so borne shall be treated as reducing the value transferred by the chargeable transfer.
- (2) Where the chargeable transfer is made under Schedule 5 to this Act, sub-paragraph (1) above shall have effect as if for the reference to the transferor there were substituted a reference to the trustee.

Restriction on freedom to dispose

- 5 (1) Where, by a contract made at any time, the right to dispose of any property has been excluded or restricted, then, in determining the value of the property for the purpose of the first relevant event happening after that time.—
- (a) the exclusion or restriction shall be taken into account only to the extent (if any) that consideration in money or money's worth was given for it; but
 - (b) if the contract was a chargeable transfer or was part of associated operations which together were a chargeable transfer, an allowance shall be made for the value transferred thereby (calculated as if no tax had been chargeable on it) or by so much thereof as is attributable to the exclusion or restriction.
- (2) Where the contract was made before 27th March 1974 sub-paragraph (1) above applies only if the first relevant event is a transfer made on death.
- (3) In this paragraph " relevant event", in relation to any property, means—
- (a) a chargeable transfer in the case of which the whole or part of the value transferred is attributable to the value of the property ; and
 - (b) anything which would be such a chargeable transfer but for this paragraph.

Incidental expenses incurred by transferor

- 6 In determining the value transferred by a transfer of value, expenses incurred by the transferor in making the transfer (but not his liability for tax)—
- (a) shall, if borne by him, be left out of account;
 - (b) shall, if borne by a person benefiting from the transfer be treated as reducing the value transferred.

Valuation of related property

- 7 (1) Where the value of any property comprised in a person's estate would be less than the appropriate portion of the value of the aggregate of that and any related property, it shall be the appropriate portion of the value of that aggregate.
- (2) For the purposes of this paragraph, property is related to the property comprised in a person's estate if—
- (a) it is comprised in the estate of his spouse ; or

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- (b) it is, or is part of, the property comprised in a settlement made by him or his spouse before 27th March 1974, and no interest in possession subsists in that property or part.
- (3) The appropriate portion of the value of the aggregate mentioned in sub-paragraph (1) above is such portion thereof as would be attributable to the value of the first-mentioned property if the value of that aggregate were equal to the sums of the values of that and any related property, the value of each property being determined as if it did not form part of that aggregate.
- (4) For the purposes of sub-paragraph (3) above the proportion which the value of a smaller number of shares of any class bears to the value of a greater number thereof shall be taken to be that which the smaller number bears to the greater; and similarly with stock, debentures and units of any other description of property.
- (5) Shares shall not be treated for the purposes of sub-paragraph (4) above as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

Value of lessor's interest

- 8 Where, under paragraph 1(3) of Schedule 5 to this Act, a lease of property is to be treated as a settlement, the value of the lessor's interest in the property shall be taken to be such part of the value of the property as bears to it the same proportion as the value of the consideration, at the time the lease was granted, bore to what would then have been the value of a full consideration in money or money's worth.

Value transferred on death

- 9 (1) In determining the value of a person's estate immediately before his death—
- (a) changes in the value of his estate which have occurred by reason of the death and fall within sub-paragraph (2) below shall be taken into account as if they had occurred before the death; and
 - (b) allowance shall be made for reasonable funeral expenses; and
 - (c) where there is a liability to make payments or transfer assets under such a disposition as is mentioned in section 40 of this Act, the liability shall be computed as if the amount or value of the payments or assets were reduced by the chargeable portion thereof (as defined in that section); and
 - (d) an allowance against the value of property situated outside the United Kingdom shall be made for any expense incurred in administering or realising the property which is shown to be attributable to the situation of the property, but the allowance shall not exceed five per cent, of the value of the property.
- (2) A change falls within this sub-paragraph if it is an addition to the property comprised in the estate or an increase or decrease of the value of any property so comprised; but the termination on the death of any interest or the passing of any interest by survivorship does not fall within this sub-paragraph.
- (3) Part II of this Schedule shall apply with respect to the valuation of qualifying investments (as defined in that Part) which are comprised in a person's estate immediately before his death and are sold by the appropriate person (as so defined) within the period of twelve months immediately following the date of the death.

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Value of amounts due

- 10 In determining the value of a right to receive a sum due under any obligation it shall be assumed that the obligation will be duly discharged, except if or to the extent that recovery of the sum is impossible or not reasonably practicable and has not become so by any act or omission of the person to whom the sum is due.

Value of life policies, etc.

- 11 (1) Subject to the following provisions of this paragraph, in determining in connection with a transfer of value the value of a policy of insurance on a person's life or of a contract for an annuity payable on a person's death, that value shall be taken to be not less than—
- (a) the total of the premiums or other consideration which, at any time before the transfer of value, has been paid under the policy or contract or any policy or contract for which it was directly or indirectly substituted ; less
 - (b) any sum which, at any time before the transfer of value, has been paid under, or in consideration for the surrender of any right conferred by, the policy or contract or a policy or contract for which it was directly or indirectly substituted.
- (2) Sub-paragraph (1) above does not apply where the transfer of value is made on the death of the person whose life was insured or, as the case may be, on whose death the annuity is payable.
- (3) Sub-paragraph (1) above does not apply where the policy is one under which the sum assured becomes payable only if the person whose life is insured dies before the expiry of a specified term or both before the expiry of a specified term and during the life of a specified person and which, if that specified term ends, or can, under the policy, be extended so as to end, more than three years after the making of the insurance, satisfies the condition that, if neither the person whose life is insured nor the specified person dies before the expiry of the specified term—
- (a) the premiums are payable during at least two-thirds of that term and at yearly or shorter intervals ; and
 - (b) the premiums payable in any one period of twelve months are not more than twice the premiums payable in any other such period.
- (4) Where the policy is one under which—
- (a) the benefit secured is expressed in units the value of which is published and subject to fluctuation ; and
 - (b) the payment of each premium secures the allocation to the policy of a specified number of such units ;
- then, if the value, at the time of the transfer of value, of the units allocated to the policy on the payment of premiums is less than the aggregate of what the respective values of those units were at the time of allocation, the value to be taken under sub-paragraph (1) above as a minimum shall be reduced by the amount of the difference.

Farm cottages

- 12 In determining the value of any agricultural property which includes cottages occupied by persons employed solely for agricultural purposes in connection with the property, no account shall be taken of any value attributable to the fact that the cottages are suitable for the residential purposes of persons not so employed.

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Open market price of unquoted shares and securities

- 13 (1) In determining the price which unquoted shares or securities might reasonably be expected to fetch if sold in the open market it shall be assumed that in that market there is available to any prospective purchaser of the shares or securities all the information which a prudent prospective purchaser might reasonably require if he were proposing to purchase them from a willing vendor by private treaty and at arm's length.
- (2) In this paragraph " unquoted shares or securities " means shares or securities which are not quoted on a recognised stock exchange.

PART II

—VALUATION OF CERTAIN SECURITIES SOLD WITHIN TWELVE MONTHS OF DEATH

Interpretation

- 14 (1) In this Part of this Schedule—
- " the appropriate person ", in relation to any qualifying investments comprised in a person's estate immediately before his death, means the person liable for tax attributable to the value of those investments or, if there is more than one such person, and one of them is in fact paying the tax, that person;
 - " the loss on sale " means the amount determined in accordance with paragraph 15 below ;
 - " qualifying investments " means shares or securities which at the date of the death in question are quoted on a recognised stock exchange, holdings in a unit trust which at that date is an authorised unit trust (as denned in section 358 of the Taxes Act) and shares in any common investment fund established under section 1 of the Administration of Justice Act 1965 ;
 - " relevant proportion ", in relation to the investments to which a claim relates, or any of them, means the proportion by which the loss on sale is reduced under paragraph 17 below;
 - " sale value ", in relation to any qualifying investments, means their value for the purposes of paragraph 15(b) below ;
 - " value on death ", in relation to any qualifying investments, means their value for the purposes of paragraph 15(a) below.
- (2) Any reference in this Part of this Schedule to the investments to which a claim relates is a reference to all the qualifying investments which, on the making of the claim, are taken into account under paragraph 15 below in determining the loss on sale.

The relief

- 15 On a claim being made in that behalf by the appropriate person there shall be determined for the purposes of this Part of this Schedule the amount (if any) by which—
- (a) the aggregate of the values which, apart from this Part of this Schedule, would be the values for the purposes of tax of all the qualifying investments comprised in a person's estate immediately before his death which are sold

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by the appropriate person within the period of twelve months immediately following the date of the death

exceeds

- (b) the aggregate of the values of those investments at the time they were so sold, taking the value of any particular investments for this purpose as the price for which they were so sold or, if it is greater, the best consideration which could reasonably have been obtained for them at the time of the sale.

16 Subject to the following provisions of this Part of this Schedule, in determining the tax chargeable on the death in question, the value of the investments to which the claim relates shall be treated as reduced by an amount equal to the loss on sale.

17 Subject to paragraph 18 below, if a claim is made under this Part of this Schedule and, at any time during the period beginning on the date of the death in question and ending two months after the date of the last sale made as mentioned in paragraph 15(a) above, the person making the claim purchases any qualifying investments in the same capacity as that in which he makes the claim, the loss on sale of the investments to which the claim relates shall be treated for the purposes of paragraph 16 above as reduced by the proportion which the aggregate of the purchase prices of all the qualifying investments so purchased bears to the aggregate of the values referred to in paragraph 15(b) above (or, if the aggregate of those purchase prices equals or exceeds the aggregate of those values, the loss on sale shall be extinguished).

18 (1) If a claim is made under this Part of this Schedule by any person in a capacity other than that of personal representative or trustee—

- (a) paragraph 17 above shall have effect in his case as if for the words " in the same capacity as that in which he makes the claim" there were substituted the words " otherwise than in the capacity of personal representative or trustee " , and
- (b) no account shall be taken under that paragraph of any qualifying investments purchased by him unless they are of the same description as one of the qualifying investments to which the claim relates.

(2) For the purposes of this paragraph and the following paragraphs, two investments, not being investments in an authorised unit trust or common investment fund, shall not be treated as of the same description if they are separately quoted on a recognised stock exchange, and an investment in one authorised unit trust or common investment fund shall not be treated as of the same description as an investment in another authorised unit trust or common investment fund.

The appropriate person

19 For the purposes of this Part of this Schedule—

- (a) the personal representatives of the deceased, and
- (b) the trustees of a settlement,

shall each be treated as a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives or trustees).

20 A claim made by the appropriate person under paragraph 15 above shall specify the capacity in which he makes the claim, and any reference in the preceding provisions of this Part of this Schedule to qualifying investments which are sold by him is a reference to investments which, immediately before their sale, were held by him in the capacity in which he makes the claim.

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Valuation on sale and purchase

- 21 In any case where, for the purposes of this Part of this Schedule, it is necessary to determine the price at which any investments were purchased or sold or the best consideration that could reasonably have been obtained on the sale of any investments, no account shall be taken of expenses (whether by way of commission, stamp duty or otherwise) which are incidental to the sale or purchase.
- 22 (1) Subject to sub-paragraph (2) below, for the purposes of this Part of this Schedule where any investments are sold or purchased by the appropriate person the date on which they are so sold or purchased shall be taken to be the date on which he entered into a contract to sell or purchase the investments.
- (2) If the sale or purchase of any investments by the appropriate person results from the exercise (whether by him or by any other person) of an option, then, for the purposes of this Part of this Schedule, the date on which the investments are sold or purchased shall be taken to be the date on which the option was granted.

Value of part of a fund

- 23 (1) In any case where—
- (a) part only of a holding of qualifying investments is comprised in a person's estate, and
 - (b) investments included in that holding are sold by the appropriate person within the period of twelve months immediately following the date of the death,
- this Part of this Schedule shall apply as if the entirety of the holding were comprised in the estate and, if a claim is made under paragraph 15 above in respect of the investments referred to in paragraph (b) above, the taxable fraction of the value of the investments to which the claim relates, as determined under this Part of this Schedule, shall be the value of that part of those investments which is comprised in the estate.
- (2) In sub-paragraph (1) above, "taxable fraction" means the fraction of which the numerator is the value, as determined apart from this Part of this Schedule, of the part of the holding referred to in paragraph (a) of that sub-paragraph and the denominator is the value, as so determined, of the entirety of that holding.

Exchanges of qualifying investments

- 24 (1) Subject to sub-paragraph (3) below, if, within the period of twelve months immediately following the date of the death in question, the appropriate person exchanges (with or without any payment by way of equality of exchange) any qualifying investments comprised in the deceased's estate immediately before his death, then, regardless of the nature of the property taken in exchange, if the market value of those investments is at the date of the exchange greater than their value on death, they shall be treated for the purposes of this Part of this Schedule as having been sold at the date of the exchange for a price equal to that market value.
- (2) For the purposes of this paragraph, the market value of any investments at any time means the value which they would (apart from this Part of this Schedule) have for the purposes of tax if they were comprised in the estate of a person who died at that time.
- (3) This paragraph does not apply in any case where the exchange falls within paragraph 27(1) below.

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Aggregation of capital receipts with sale price of investments

- 25 (1) For the purposes of paragraph 15(b) above, if—
- (a) at any time after the death in question (whether during or after the expiry of the period of twelve months immediately following the date of the death) the appropriate person receives any capital payment or payments which is or are attributable to any qualifying investments comprised in the deceased's estate immediately before his death, and
 - (b) those investments are sold by him within that period;
- the price for which those investments were sold or, as the case may be, the best consideration referred to in paragraph 15(b) above shall be taken to be increased by an amount equal to the capital payment: or, as the case may be, the aggregate of the capital payments, referred to in paragraph (a) above.
- (2) If the appropriate person receives or becomes entitled to receive in respect of any qualifying investments a provisional allotment of shares in or debentures of a company and he disposes of his rights, the amount of the consideration for the disposal shall be treated for the purposes of this paragraph as a capital payment attributable to those investments.
- (3) In this paragraph " capital payment", in relation to any investment, does not include the price paid on the sale of the investments but, subject to that, includes any money or money's worth which does not constitute income for the purposes of income tax.

Payment of calls

- 26 For the purposes of paragraph 15(a) above if—
- (a) at any time after the death in question (whether during or after the expiry of the period of twelve months immediately following the date of the death) the appropriate person pays an amount in pursuance of a call in respect of any qualifying investments comprised in the deceased's estate immediately before his death, and
 - (b) those investments are sold by the appropriate person within that period,
- the value on death of those investments shall be the aggregate of the amount so paid and their value as determined apart from this Part of this Schedule.

Effect of changes in a holding between death and sale

- 27 (1) This paragraph applies in any case where, within the period of twelve months immediately following the date of the death in question, there occurs in relation to any qualifying investments comprised in the deceased's estate immediately before his death (in this paragraph referred to as "the original holding") a transaction to which paragraph 4 of Schedule 7 to the Finance Act 1965 applies, that is to say—
- (a) a reorganisation, within the meaning of that paragraph, or reduction of the share capital of a company; or
 - (b) the conversion of securities within the meaning of paragraph 5 of that Schedule ; or
 - (c) the issue by a company of shares or debentures in exchange for shares in or debentures of another company in such circumstances that paragraph 6 of that Schedule applies ; or
 - (d) the issue by a company of shares or debentures under such an arrangement as is referred to in paragraph 7 of that Schedule;

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or any transaction relating to a unit trust scheme which corresponds to any of the transactions referred to in paragraphs (a) to (d) above and to which paragraph 4 of that Schedule applies by virtue of section 45(8) of the Finance Act 1965.

- (2) Subject to sub-paragraph (3) below, where this paragraph applies the holding of investments which, as the result of the transaction, constitutes a new holding, within the meaning of paragraph 4 of the said Schedule 7, shall be treated for the purposes of this Part of this Schedule as being the same as the original holding ; and references in the following provisions of this paragraph to the new holding shall be construed accordingly.
- (3) If, in a case where this paragraph applies, the appropriate person gives, or becomes liable to give, as part of or in connection with the transaction concerned, any consideration for the new holding or any part of it, then, for the purposes of sub-paragraph (5) below, the value on death of the new holding shall be treated as the aggregate of—
- (a) the value on death of the original holding, and
 - (b) an amount equal to that consideration,
- and in any other case the value on death of the new holding shall be taken to be the same as the value on death of the original holding.
- (4) For the purposes of sub-paragraph (3) above, there shall not be treated as consideration given for the new holding or any part of it—
- (a) any surrender, cancellation or other alteration of any of the investments comprised in the original holding or of the rights attached thereto, or
 - (b) any consideration consisting of any application, in paying up the new holding or any part of it, of assets of the company concerned or of any dividend or other distribution declared out of those assets but not made.

- (5) If, in a case where this paragraph applies, the appropriate person sells, within the period referred to in sub-paragraph (1) above, any investments comprised in the new holding, the value on death of those investments shall be determined by the formula—

$$\frac{V_s(H - S)}{(V_s + V_r)}$$

where—

V_s is the sale value of the investments,

V_r is the market value at the time of the sale of any investments remaining in the new holding after the sale,

H is the value on death of the new holding, and

S is the value on death of any investments which were originally comprised in the new holding but have been sold on a previous occasion or occasions.

- (6) Sub-paragraph (2) of paragraph 24 above shall apply for the purposes of sub-paragraph (5) above as it applies for the purposes of that paragraph.

Effect of purchase, etc., of investments of the same description

- 28 (1) If, at any time within the period of twelve months immediately following the date of the death in question, the appropriate person sells any investments which form part of a holding of investments which are all of the same description and consist of—

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- (a) investments comprised in the deceased's estate immediately before his death, and
- (b) investments acquired by the appropriate person, by purchase or otherwise, after the death but not in the circumstances in which paragraph 27 above applies,

the investments so sold shall be apportioned for the purposes of this Part of this Schedule between those falling within paragraph (a) and those falling within paragraph (b) above in the same proportion as, immediately before the sale, the investments comprised in the holding and falling within paragraph (a) above bore to the investments so comprised and falling within paragraph (b) above.

- (2) For the purposes of this paragraph, if the appropriate person holds investments of any description in the capacity of personal representative or trustee, the investments shall not be treated as forming part of the same holding as investments which, though of the same description, are held by him otherwise than in that capacity.

Attribution of values to specific investments

- 29 (1) This paragraph shall have effect in determining the value for the purposes of tax (and, accordingly, the market value for the purposes of capital gains tax under section 26 of the Finance Act 1965) of any investment (in this paragraph referred to as a "specific investment") which is included among the investments to which a claim relates.
- (2) Subject to the following provisions of this paragraph, the value of a specific investment shall be its sale value.
- (3) Subject to the following provisions of this paragraph, in a case where the calculation of the loss on sale of the investments to which a claim relates is affected by paragraph 17 above—
 - (a) if the value on death of a specific investment exceeds its sale price, the value of that investment shall be the aggregate of its sale value and an amount equal to the relevant proportion of the difference between its sale price and its value on death ; and
 - (b) if the sale price of a specific investment exceeds its value on death, the value of the investment shall be its sale value less an amount equal to the relevant proportion of the difference between its value on death and its sale price.
- (4) For the purposes of sub-paragraphs (2) and (3) above, the sale value of a specific investment in respect of which an amount has been paid in pursuance of a call, as mentioned in paragraph 26 above, shall be reduced by the amount so paid in respect of that investment.
- (5) In a case where, by virtue of sub-paragraph (3) of paragraph 27 above, the value on death of the new holding, within the meaning of that paragraph, includes an amount equal to the consideration referred to in that sub-paragraph, the sale value of any specific investment comprised in the new holding shall be reduced, for the purposes of sub-paragraphs (2) and (3) above, by an amount which bears to that consideration the like proportion as the value on death of the specific investment sold bears to the value on death of the whole of the new holding.
- (6) In sub-paragraph (3) above " sale price", in relation to a specific investment, means the price for which the investment was sold by the appropriate person or, if it is greater, the best consideration which could reasonably have been obtained for the specific investment at the time of the sale ; and paragraph 25 above shall apply for

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the purposes of this sub-paragraph as it applies for the purposes of paragraph 15(b) above.

Limitation of loss on sale

- 30 In any case where, apart from this paragraph, the loss on sale of any investments—
- (a) in respect of which an amount has been paid in pursuance of a call as mentioned in paragraph 26 above, or
 - (b) which are sold as mentioned in paragraph 27(5) above,
- would exceed their value as determined apart from this Part of this Schedule, their sale value shall be treated for the purposes of paragraphs 16 and 29 above as being of such an amount that the loss on sale would be equal to their value as so determined.