

*Changes to legislation: There are currently no known outstanding effects
for the Agriculture Act 1993, Part I. (See end of Document for details)*

SCHEDULES

SCHEDULE 2

PROVISIONS RELATING TO CARRYING OUT OF APPROVED SCHEME OF REORGANISATION

PART I

TAXATION PROVISIONS

Modifications etc. (not altering text)

C1 Sch. 2 Pt. I modified (retrospectively) by 1996 c. 8, s. 203(1)

Transfer to successor bodies: general

- 1 (1) The following provisions shall apply for the purposes of the Corporation Tax Acts, namely—
- (a) any trade, or part of a trade, carried on by a milk marketing board which is transferred under section 11 above to a qualifying body shall be treated as having been, at the time when it began to be carried on by the board and at all times since that time, carried on by that body;
 - (b) where any trade, or part of a trade, carried on by a milk marketing board is transferred under section 11 above to a qualifying body, the trade carried on by that body after the transfer under that section shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried on before the transfer under that section;
 - (c) any property, rights or liabilities of a milk marketing board which are transferred under section 11 above to a qualifying body shall be treated as having been, at the time when they became vested in the board and at all times since that time, property, rights or liabilities of that body;
 - (d) anything done by a milk marketing board in relation to property, rights or liabilities of its which are transferred under section 11 above to a qualifying body shall be deemed to have been done by that body.
- (2) In its application to this paragraph, paragraph 31(1) below (definition of “qualifying body”) shall have effect with the omission of paragraph (b).
- (3) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the milk marketing board ending before the date of the transfer under section 11 above.

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Modifications etc. (not altering text)

C2 Sch. 2 Pt. I para. 1 modified (retrospectively with effect as mentioned in s. 203(5) of the amending Act) by 1996 c. 8, s. 203(5)(7)

- 2 (1) The following provisions shall apply for the purposes of the Corporation Tax Acts, namely—
- (a) any trade, or part of a trade, carried on by a subsidiary of a milk marketing board which is transferred under section 11 above to a qualifying body shall be treated as having been, at the time when it began to be carried on by the subsidiary and at all times since that time, carried on by that body;
 - (b) where any trade, or part of a trade, carried on by a subsidiary of a milk marketing board is transferred under section 11 above to a qualifying body, the trade carried on by that body after the transfer under that section shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried on before the transfer under that section;
 - (c) any property, rights or liabilities of a subsidiary of a milk marketing board which are transferred under section 11 above to a qualifying body shall be treated as having been, at the time when they became vested in the subsidiary and at all times since that time, property, rights or liabilities of that body;
 - (d) anything done by a subsidiary of a milk marketing board in relation to property, rights or liabilities of its which are transferred under section 11 above to a qualifying body shall be deemed to have been done by that body.
- (2) In its application to this paragraph, paragraph 31(1) below (definition of “qualifying body”) shall have effect with the omission of paragraph (b).
- (3) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the subsidiary ending before the date of the transfer under section 11 above.
- 3 (1) This paragraph applies where—
- (a) in accordance with an approved scheme, shares in a subsidiary of the board to which the scheme relates are transferred otherwise than under section 11 above to a qualifying body (“the successor”), and
 - (b) the scheme provides—
 - (i) for free shares in the successor to be issued or transferred to persons by virtue of their being, or having been, registered producers, and
 - (ii) for the taking of steps with a view to securing the quotation of the successor on the Stock Exchange.
- (2) For the purposes of the Corporation Tax Acts—
- (a) the shares transferred to the successor shall be treated as having been, at the time when they became vested in the transferor and at all times since that time, vested in the successor; and
 - (b) anything done by the transferor in relation to the shares transferred to the successor shall be deemed to have been done by the successor.
- (3) For the purposes of sub-paragraph (1)(b)(i) above, shares are free if they are issued or transferred without any consideration being provided by the persons acquiring them, there being disregarded for this purpose any depreciatory effect of transfers under

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the scheme on the value of a right to participate in the winding up of the board to which the scheme relates.

- (4) This paragraph shall have effect in relation to accounting periods beginning after the last complete accounting period of the transferor ending before the date of the transfer to the successor.

4 (1) Where—

- (a) in accordance with an approved scheme, shares in a subsidiary of the relevant board (“the transferred company”) are transferred otherwise than under section 11 above to a qualifying body (“the successor”),
- (b) immediately after the transfer, the successor is a member of a group of which the relevant board is a member, and
- (c) the scheme provides as mentioned in paragraph 3(1)(b) above,

sections 178 and 179 of the ^{M1}Taxation of Chargeable Gains Act 1992 shall not apply on the transferred company ceasing to be a member of a group of which the relevant board is a member if, immediately after doing so, it is a member of a group of which the successor is a member.

- (2) Where by virtue of sub-paragraph (1) above sections 178 and 179 of the Taxation of Chargeable Gains Act 1992 do not apply, then, on the transferred company ceasing to be a member of a group of which the successor is a member, those sections shall apply—

- (a) as if any assets acquired by the transferred company, at any time when it was a member of a group of which the relevant board was a member, from any member of that group had been acquired by it at that time from the successor, and
- (b) as if the transferred company and the successor had at all material times been associated companies for the purposes of those sections.

- (3) In this paragraph—

“group” has the meaning given by section 170 of the Taxation of Chargeable Gains Act 1992; and

“relevant board” means the board to which the scheme relates.

Marginal Citations

M1 1992 c. 12.

Chargeable gains

5 (1) This paragraph applies where—

- (a) by virtue of a qualifying transfer a company would, but for paragraph 1, 2 or 3 above, cease to be a member of a group of which a milk marketing board is a member; and
- (b) assets have been acquired by that company from that board or from any other member of that group, other than one which, but for paragraph 1, 2 or 3 above, would have ceased to be a member of that group at the same time and which, both immediately before and immediately after the transfer, is a member of the same group as that company.

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- (2) On the company ceasing to be a member of a group of which the body to which the qualifying transfer is made is a member, sections 178 and 179 of the ^{M2}Taxation of Chargeable Gains Act 1992 shall apply as if any assets acquired at any time as mentioned in sub-paragraph (1) above had been acquired by the company from that body at that time.
- (3) In this paragraph—
“group” has the meaning given by section 170 of the Taxation of Chargeable Gains Act 1992; and
“qualifying transfer” means a transfer under an approved scheme to a qualifying body of shares in a subsidiary of the board to which the scheme relates, being a transfer which takes place under section 11 above or in circumstances in which paragraph 3 above applies.

Marginal Citations

M2 1992 c. 12.

Roll-over relief

- 6 (1) This paragraph applies where a milk marketing board has, before the vesting day under an approved scheme, disposed of (or of its interest in) any assets used, throughout the period of ownership, wholly or partly for the purposes of a trade or part of a trade transferred under section 11 above to a qualifying body.
- (2) Sections 152 to 156 of the Taxation of Chargeable Gains Act 1992 (roll-over relief on replacement of business assets) shall have effect in relation to that disposal as if the board and the qualifying body were the same person.

Unallowed capital losses

- 7 (1) This paragraph applies where under an approved scheme there are one or more relevant successors in relation to the relevant board.
- (2) Where there is one relevant successor in relation to the relevant board, any unallowed capital losses of the relevant board shall—
(a) be apportioned between the relevant board and the relevant successor in accordance with the scheme, and
(b) so far as apportioned to the relevant successor, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.
- (3) Where there is more than one relevant successor in relation to the relevant board, any unallowed capital losses of the relevant board shall—
(a) be apportioned amongst the relevant board and the relevant successors in accordance with the scheme, and
(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

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- (4) In this paragraph, references to relevant successor, in relation to the relevant board, include a body to which shares held by that board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies.
- (5) In this paragraph—
“allowable capital losses” means losses which are allowable losses for the purposes of corporation tax on chargeable gains;
“relevant board” means the board to which the scheme relates; and
“unallowed capital losses” means any allowable capital losses which have accrued to the relevant board before the vesting day under the scheme, in so far as they have not been allowed as deductions from chargeable gains.
- 8 (1) This paragraph applies where an approved scheme provides for the transfer of all the property, rights and liabilities to which a subsidiary of the relevant board is entitled or subject on the vesting day under the scheme.
- (2) Where there is one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall be treated as allowable capital losses accruing to the relevant successor on the disposal of an asset on the vesting day under the scheme.
- (3) Where there is more than one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—
(a) be apportioned between the relevant successors in accordance with the scheme, and
(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.
- (4) In this paragraph—
“allowable capital losses” means losses which are allowable losses for the purposes of corporation tax on chargeable gains;
“relevant board” means the milk marketing board to which the scheme relates; and
“unallowed capital losses” means any allowable capital losses which have accrued to the subsidiary before the vesting day under the scheme, in so far as they have not been allowed as deductions from chargeable gains.
- 9 (1) This paragraph applies where an approved scheme provides for the transfer of some, but not all, of the property, rights and liabilities to which a subsidiary of the relevant board is entitled or subject on the vesting day under the scheme.
- (2) Where there is one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—
(a) be apportioned between the subsidiary and the relevant successor in accordance with the scheme, and
(b) so far as apportioned to the relevant successor, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.
- (3) Where there is more than one relevant successor in relation to the subsidiary, any unallowed capital losses of the subsidiary shall—
(a) be apportioned amongst the subsidiary and the relevant successors in accordance with the scheme, and

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(b) in the case of each relevant successor to which such losses are so apportioned, be treated as allowable capital losses accruing to it on the disposal of an asset on the vesting day under the scheme.

(4) Sub-paragraph (4) of paragraph 8 above shall apply for the purposes of this paragraph as it applies for the purposes of that.

10 Where by virtue of paragraph 8 or 9 above losses of one body are treated as accruing to another body, they shall not be allowed as deductions from chargeable gains accruing to that other body on a disposal of shares in, or securities of, the first-mentioned body.

Apportionment of losses and capital allowances

11 (1) This paragraph applies where a trade carried on by a milk marketing board is transferred under section 11 above to more than one qualifying body (“the successor bodies”).

(2) There shall be apportioned between the successor bodies—

- (a) the unallowed tax losses of the board, and
- (b) any expenditure incurred by the board before the date of the transfer and by reference to which capital allowances may be made.

(3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—

- (a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade transferred, and
- (b) as respects the apportionment of such expenditure, to the division of the board’s assets between the successor bodies.

(4) In this paragraph, “unallowed tax losses” means—

- (a) any losses which, as at the end of the last complete accounting period of the board ending before the date of the transfer under section 11 above, are losses which under section 393(1) of the ^{M3}Income and Corporation Taxes Act 1988 are or, if a claim had been made under that subsection, would be available for relief against the board’s trading income for the next accounting period, and
- (b) any allowances which, as at the end of the last complete accounting period of the board ending before that date, are allowances which, under section 145(2) of the ^{M4}Capital Allowances Act 1990, are available for carry forward to the next accounting period.

Marginal Citations

M3 1988 c. 1.

M4 1990 c. 1.

12 (1) This paragraph applies where a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to more than one qualifying body (“the successor bodies”).

(2) There shall be apportioned between the successor bodies—

- (a) the unallowed tax losses of the subsidiary, and

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- (b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.
 - (3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—
 - (a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade transferred, and
 - (b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets between the successor bodies.
 - (4) In this paragraph, “unallowed tax losses” means—
 - (a) any losses which, as at the end of the last complete accounting period of the subsidiary ending before the date of the transfer under section 11 above, are losses which under section 393(1) of the Income and Corporation Taxes Act 1988 are or, if a claim had been made under that subsection, would be available for relief against the subsidiary's trading income for the next accounting period, and
 - (b) any allowances which, as at the end of the last accounting period of the subsidiary ending before that date, are allowances which, under section 145(2) of the Capital Allowances Act 1990, are available for carry forward to the next accounting period.
- 13 (1) This paragraph applies where part of a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to one qualifying body (“the successor body”) and the remainder is retained by the subsidiary.
 - (2) There shall be apportioned between the subsidiary and the successor body—
 - (a) the unallowed tax losses of the subsidiary, and
 - (b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.
 - (3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—
 - (a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade, and
 - (b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets between itself and the successor body.
 - (4) In this paragraph, “unallowed tax losses” has the same meaning as in paragraph 12 above.
- 14 (1) This paragraph applies where part of a trade carried on by a subsidiary of a milk marketing board is transferred under section 11 above to more than one qualifying body (“the successor bodies”) and the remainder is retained by the subsidiary.
 - (2) There shall be apportioned amongst the subsidiary and the successor bodies—
 - (a) the unallowed tax losses of the subsidiary, and
 - (b) any expenditure incurred by the subsidiary before the date of the transfer and by reference to which capital allowances may be made.
 - (3) The apportionment under sub-paragraph (2) above shall be made in such manner as is just and reasonable having regard—
 - (a) to the extent to which the losses and expenditure mentioned in that sub-paragraph are attributable to the different parts of the trade, and

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- (b) as respects the apportionment of such expenditure, to the division of the subsidiary's assets amongst itself and the successor bodies.
- (4) In this paragraph, “unallowed tax losses” has the same meaning as in paragraph 12 above.
- 15 (1) Any question which arises as to the manner in which the apportionment under any of paragraphs 11 to 14 above is to be made shall be determined, for the purposes of the tax of the parties concerned—
 - (a) in a case where one body of General Commissioners have jurisdiction with respect to all the parties concerned, by those Commissioners, unless the parties concerned agree that it shall be determined by the Special Commissioners;
 - (b) in a case where more than one body of General Commissioners have jurisdiction with respect to the parties concerned, by such of those bodies of General Commissioners as the Commissioners of Inland Revenue may direct, unless the parties concerned agree that it shall be determined by the Special Commissioners; and
 - (c) in any other case, by the Special Commissioners.
- (2) The Commissioners by whom the question falls to be determined shall make the determination in like manner as if it were an appeal except that the parties concerned shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.
- (3) In this paragraph, references to the parties concerned are to the persons between or amongst whom the apportionment in question falls to be made.

Distributions

- 16 (1) This paragraph applies to the following events—
 - (a) the issue or transfer under an approved scheme on or before the vesting day under the scheme of any shares in, or securities of, a relevant body;
 - (b) the issue or transfer under an approved scheme to trustees of any shares in, or securities of, a company on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers;
 - (c) the conferring of any right under an approved scheme on or before the vesting day under the scheme, being a right to a distribution out of the assets of a relevant body;
 - (d) the conferring under an approved scheme on or before the vesting day under the scheme of any such right as is mentioned in paragraph (a), (b) or (c) of paragraph 26(1) below;
 - (e) the transfer under an approved scheme on or before the vesting day under the scheme of any property or rights of a milk marketing board, or of a subsidiary of such a board, to a qualifying body; and
 - (f) the transfer under an approved scheme on or before the vesting day under the scheme of any relevant asset of a milk marketing board, or of a subsidiary of such a board, to any person by virtue of his being, or having been, a registered producer.

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- (2) None of the events to which this paragraph applies, and no combination of the events mentioned in paragraphs (a) (so far as relating to the issue or transfer of shares) and (e) of sub-paragraph (1) above, shall be regarded as—
- (a) a distribution for the purposes of the Corporation Tax Acts, or
 - (b) a capital distribution for the purposes of section 122 of the ^{M5}Taxation of Chargeable Gains Act 1992.
- (3) In this paragraph—
- (a) “relevant asset” means an item of plant or machinery used for the production or storage of milk, dairy produce or any produce of which milk is an ingredient;
 - (b) “relevant body” means—
 - (i) a relevant successor of a milk marketing board,
 - (ii) a subsidiary of such a board, or
 - (iii) a relevant successor of such a subsidiary; and
 - (c) references to relevant successor—
 - (i) in relation to a milk marketing board, include a body to which shares held by the board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies, and
 - (ii) in relation to a subsidiary of such a board, include a body to which shares held by the subsidiary in a subsidiary of its are transferred in circumstances in which that paragraph applies.

Modifications etc. (not altering text)

- C3** Sch. 2 Pt. I para. 16 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)
- C4** Sch. 2 Pt. I para. 16(1) modified (retrospectively) by 1996 c. 8, s. 203(1)(3)

Marginal Citations

- M5** 1992 c. 12.

Disapplication of section 22 of the Taxation of Chargeable Gains Act 1992

- 17 Section 22 of the Taxation of Chargeable Gains Act 1992 (disposal where capital sums derived from assets) shall not apply in relation to any of the events to which paragraph 16 above applies.

Depreciatory transactions

- 18 (1) This paragraph applies where—
- (a) by virtue of the occurrence of any of the events to which paragraph 16 above applies (“the relevant event”), one company (“the first company”) would, apart from the provisions of this Part of this Schedule, be treated for the purposes of the taxation of chargeable gains as disposing of, or of an interest in, any shares in, or securities of, another company (“the second company”), and
 - (b) as a result of the occurrence of that event the value of those shares or securities (“the shares or securities concerned”) is materially reduced.

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- (2) Section 176 of the ^{M6}Taxation of Chargeable Gains Act 1992 shall apply to any disposal to which sub-paragraph (3), (4) or (5) below applies—
- (a) as if the relevant event were a depreciatory transaction, and
 - (b) if the first company and the second company and, if different, the company which makes the disposal are not, throughout the period beginning with the occurrence of the relevant event and ending with the disposal, members of a group of companies (within the meaning of that section), as if they were.
- (3) This sub-paragraph applies to any disposal by the first company which—
- (a) is a disposal of the asset of which the shares or securities concerned are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist at the time of the event, and
 - (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.
- (4) This sub-paragraph applies to any disposal, by a company to which shares or securities comprised in the asset mentioned in sub-paragraph (3) above are transferred under section 11 above, or in circumstances in which paragraph 3 above applies, which—
- (a) is a disposal of the asset which those shares or securities are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist of, or to be included in, immediately after the transfer, and
 - (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.
- (5) This sub-paragraph applies to any disposal, by a company which acquires shares or securities on an excepted disposal, which—
- (a) is a disposal of the asset which those shares or securities are deemed for the purposes of the Taxation of Chargeable Gains Act 1992 to consist of, or to be included in, immediately after the acquisition, and
 - (b) is not a disposal which by virtue of any enactment is treated as one on which neither a gain nor a loss accrues to the person making the disposal.
- (6) In sub-paragraph (5) above, the reference to an excepted disposal is to a disposal to which sub-paragraph (3), (4) or (5) above would have applied but for paragraph (b) of that sub-paragraph.
- (7) In this paragraph, “company” has the same meaning as in the Taxation of Chargeable Gains Act 1992.

Marginal Citations

M6 1992 c. 12.

Acquisition of assets by registered producers

- 19 (1) This paragraph applies where an asset in the form of an item of production equipment is acquired under an approved scheme by any person by virtue of his being, or having been, a registered producer.

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- (2) The acquisition of the asset shall not be taken into account as a receipt in computing, under Case I or VI of the Schedule set out in section 18 of the ^{M7}Income and Corporation Taxes Act 1988 (Schedule D), the profits of the person acquiring it.
- (3) The person acquiring the asset shall, for the purposes of tax on chargeable gains, be treated as acquiring the asset for no consideration, and without making a disposal.
- (4) No allowance in respect of the asset shall be made under [^{F1}the Capital Allowances Act 2001] to the person acquiring it.
- (5) The person disposing of the asset shall—
 - (a) for the purposes of tax on chargeable gains, be treated as if the consideration for the disposal were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
 - (b) for the purposes of [^{F2}the Capital Allowances Act 2001], be treated as neither entitled to any balancing allowance nor subject to any balancing charge by virtue of the disposal.
- (6) In sub-paragraph (1) above, the reference to production equipment is to plant or machinery used for the production or storage of milk, dairy produce or any produce of which milk is an ingredient.

Textual Amendments

- F1** Words in Sch. 2 para. 19(4) substituted (22.3.2001 with effect as mentioned in s. 579(1)) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 90
- F2** Words in Sch. 2 para. 19(5)(b) substituted (22.3.2001 with effect as mentioned in s. 579(1)) by 2001 c. 2, ss. 578, 579(1), Sch. 2 para. 90

Marginal Citations

- M7** 1988 c. 1.

- 20 (1) This paragraph applies where an asset of any of the following descriptions—
- (a) a share in, or security of, a body which is a relevant successor of the relevant board,
 - (b) a right to participate in the winding up of such a body,
 - (c) a share in, or security of, a subsidiary of the relevant board, and
 - (d) a share in, or security of, a body which is a relevant successor of such a subsidiary,
- is acquired under an approved scheme by any person by virtue of his being, or having been, a registered producer, and is so acquired without any consideration being provided by the person acquiring it.
- (2) The acquisition of the asset shall not be taken into account as a receipt in computing, under Case I or VI of the Schedule set out in section 18 of the Income and Corporation Taxes Act 1988 (Schedule D), the profits of the person acquiring it.
 - (3) The person acquiring the asset shall, for the purposes of tax on chargeable gains, be treated as acquiring the asset for no consideration, and without making a disposal.
 - (4) Where the asset is acquired on a disposal, the person disposing of it shall, for the purposes of tax on chargeable gains, be treated as if the consideration for the disposal

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were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him.

- (5) For the purposes of this paragraph, a person shall not be regarded as providing consideration by virtue only of the fact that transfers under the scheme reduce the value of his right to participate in a winding up of the relevant board.
- (6) In this paragraph—
- (a) references to the relevant board are to the board to which the scheme relates, and
 - (b) references to relevant successor—
 - (i) in relation to the relevant board, include a body to which shares held by that board in a subsidiary of its are transferred in circumstances in which paragraph 3 above applies, and
 - (ii) in relation to a subsidiary of that board, include a body to which shares held by the subsidiary in a subsidiary of its are transferred in circumstances in which that paragraph applies.

Modifications etc. (not altering text)

- C5** Sch. 2 Pt. I para. 20 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)
Sch. 2 Pt. I para. 20 excluded (retrospectively with effect as mentioned in s. 203(8) of the amending Act) by 1996 c. 8, s. 203(8)

Trusts for registered producers

- 21 (1) This paragraph applies where—
- (a) under an approved scheme, shares in, or securities of, a company are issued or transferred to trustees on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers, and
 - (b) the circumstances are such that in the hands of the trustees the shares or securities constitute settled property within the meaning of the ^{M8}Taxation of Chargeable Gains Act 1992.
- (2) For the purposes of tax on chargeable gains—
- (a) where the trustees acquire the shares or securities on a disposal, the person making the disposal shall be treated as if the consideration for the disposal were of such amount as would secure that on the disposal neither a gain nor a loss accrues to him,
 - (b) the shares or securities shall be treated as acquired by the trustees for no consideration,
 - (c) the interest of any beneficiary in the settled property constituted by the shares or securities shall be treated as acquired by him for no consideration and as having no value at the time of its acquisition,
 - (d) where a beneficiary becomes absolutely entitled as against the trustees to any of the settled property, both the trustees and the beneficiary shall be treated as if, on his becoming so entitled, the shares or securities in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 60(1) of the Taxation of Chargeable Gains Act 1992,

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for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees (and accordingly section 71 of that Act shall not apply in relation to that occasion), and

- (e) on the disposal by a beneficiary of an interest in the settled property, other than the disposal treated as occurring for the purposes of paragraph (d) above, any gain accruing shall be a chargeable gain (and accordingly section 76(1) of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to the disposal).

Marginal Citations

M8 1992 c. 12.

- 22 (1) This paragraph applies where, under an approved scheme, shares in, or securities of, a company are issued or transferred to trustees on terms which provide for the transfer of those shares or securities to persons by virtue of their being, or having been, registered producers.
- (2) The trust shall not be treated as a unit trust scheme for the purposes of [F3 the Tax Acts] or section 99 of the Taxation of Chargeable Gains Act 1992 if it would not fall to be so treated were there disregarded—
- (a) any depreciatory effect of transfers under the approved scheme on a right to participate in a winding up of the board to which that scheme relates, and
- (b) any management of the trust property as a whole by or on behalf of the trustees.

Textual Amendments

F3 Words in Sch. 2 para. 22(2) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 362 (with Sch. 2)

Reserve funds

- 23 (1) This paragraph applies where under an approved scheme the board to which the scheme relates is required to make such a payment as is referred to in section 509(1) of the M9 Income and Corporation Taxes Act 1988 (payment of trading receipts into reserve fund).
- (2) The board shall, notwithstanding the revocation of the marketing scheme formerly administered by it, be treated as a body to which section 509(1) of that Act applies.
- (3) The reference in section 509(1) of that Act to producers shall be construed as a reference to the persons who, under the approved scheme, are entitled to share in any surplus assets of the board remaining on the winding up of its affairs.

Marginal Citations

M9 1988 c. 1.

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Securities of successor bodies

- 24 (1) This paragraph applies where under an approved scheme any shares are allotted, or issued without prior allotment—
- (a) to any person by virtue of his being, or having been, a registered producer and without any consideration being provided by him,
 - (b) to trustees on terms which provide for the transfer of the shares to persons by virtue of their being, or having been, registered producers, or
 - (c) to the relevant board,
- by a body to which sub-paragraph (2) below applies.
- (2) This sub-paragraph applies to a body which—
- (a) is a relevant successor of the relevant board, or of a subsidiary of that board, and
 - (b) is not a body in relation to which the scheme makes provision for the transfer to it of anything other than shares in a subsidiary of the relevant board.
- (3) The shares shall be treated for the purposes of the enactments relating to the taxation of company distributions as if they had been issued wholly in consideration of a subscription paid to the relevant successor of an amount equal to the market value of the shares at the time of allotment or, if issued without prior allotment, at the time of issue.
- (4) In sub-paragraph (3) above, the reference to the market value of the shares is to the price which they might reasonably be expected to fetch on a sale in the open market.
- (5) Section 272(2) to (4) of the ^{M10}Taxation of Chargeable Gains Act 1992 (general principles for determining market value of shares) shall apply for the purposes of this paragraph.
- (6) Where, as at the time at which the market value of any shares falls to be determined for the purposes of this paragraph, the shares are not quoted on a recognised stock exchange, subsection (3) of section 273 of that Act (assumption with respect to information available to prospective purchaser) shall apply for the purposes of the determination as it applies for the purposes of a determination falling within subsection (1) of that section.
- (7) In sub-paragraph (6) above, “recognised stock exchange” has the meaning given by section 841 of the Income and Corporation Taxes Act 1988.
- (8) Sub-paragraphs (5) and (6) of paragraph 20 above shall apply for the purposes of this paragraph as they apply for the purposes of that.

Marginal Citations

M10 1992 c. 12.

- 25 (1) This paragraph applies where under an approved scheme any debenture—
- (a) is issued by a body which is a relevant successor of the relevant board, or of a subsidiary of that board, and
 - (b) is either—
 - (i) issued to any person by virtue of his being, or having been, a registered producer and without any consideration being provided by him, or

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- (ii) included in an issue of debentures to trustees on terms which provide for the debentures to be transferred to persons by virtue of their being, or having been, registered producers.
- (2) The debenture shall be treated for the purposes of the enactments relating to the taxation of company distributions, or to the taxation of the income of companies, as if it had been issued—
- (a) wholly in consideration of a loan made to the relevant successor of an amount equal to the principal sum payable under the debenture, and
 - (b) wholly and exclusively for the purposes of the trade carried on by the relevant successor.
- (3) For the purposes of section 117(1) of the ^{M11}Taxation of Chargeable Gains Act 1992 (meaning of “qualifying corporate bond”), the indebtedness acknowledged by the debenture shall be treated as representing a normal commercial loan at any time after the debenture has been acquired by a person as a result of a disposal which is not excluded for the purposes of section 117(7) of that Act.
- (4) Except as provided by sub-paragraph (3) above, the indebtedness acknowledged by the debenture shall not be treated for those purposes as representing a normal commercial loan.
- (5) Sub-paragraphs (5) and (6) of paragraph 20 above shall apply for the purposes of this paragraph as they apply for the purposes of that.

Modifications etc. (not altering text)

- C6** Sch. 2 Pt. I para. 25 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)
Sch. 2 Pt. I para. 25 modified (29.4.1996) by 1996 c. 8, s. 203(9)

Marginal Citations

- M11** 1992 c. 12.

- 26 (1) This paragraph applies where under an approved scheme there is conferred on any person by virtue of his being, or having been, a registered producer—
- (a) any right to acquire shares in a body which is a relevant successor of the relevant board, or of a subsidiary of that board, in priority to other persons,
 - (b) any right to acquire shares in that body for consideration of an amount or value lower than the market value of the shares, or
 - (c) any right to free shares in that body.
- (2) The right shall be regarded for the purposes of tax on chargeable gains as an option (within the meaning of section 144 of the Taxation of Chargeable Gains Act 1992) granted to, and acquired by, him for no consideration and having no value at the time of that grant and acquisition.
- (3) For the purposes of sub-paragraph (1)(c) above, shares are free if they are issued or transferred without any consideration being provided by the person acquiring them, there being disregarded for this purpose any depreciable effect of transfers under the scheme on the value of a right to participate in a winding up of the relevant board.
- (4) Sub-paragraph (6) of paragraph 20 above shall apply for the purposes of this paragraph as it applies for the purposes of that.

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Modifications etc. (not altering text)

- C7** Sch. 2 Pt. I para. 26 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)

Levies under section 17

- 27 Any sum required to be paid under section 17 above by a person carrying on a trade as a milk producer shall be allowed as a deduction in computing the profits of the trade for the purposes of tax.

Stamp duty

- 28 (1) No transfer effected under section 11 above shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable—
- (a) on an approved scheme, or
 - (b) on an instrument which is certified to the Commissioners of Inland Revenue by the relevant authority—
 - (i) to be an instrument made in pursuance of such a scheme, and
 - (ii) to be an instrument in respect of which no disqualifying consideration has been given.
- (3) For the purposes of sub-paragraph (2)(b)(ii) above, consideration given in respect of an instrument made in pursuance of an approved scheme shall be treated as disqualifying consideration unless—
- (a) it is given by the milk marketing board to which the scheme relates (“the relevant board”),
 - (b) it is given by a person to whom property, rights or liabilities of the relevant board, or of a subsidiary of that board, are transferred under the scheme, other than a person who is, or has been, a registered producer, or
 - (c) it is given by a person who is, or has been, a registered producer and takes the form of a surrender in whole or part of a right to participate in the winding up of the relevant board.
- (4) For the purposes of sub-paragraph (3)(b) above, a person to whom property is leased shall be treated as a person to whom property is transferred if the scheme could, without breaching the requirement in paragraph 7(2) of Schedule 1 to this Act, have provided for the property concerned to be transferred to him.
- (5) No instrument which is certified as mentioned in paragraph (b) of sub-paragraph (2) above shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable, or
 - (b) it has, in accordance with section 12 of the ^{M12}Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped.
- (6) In sub-paragraph (2)(b) above, “relevant authority” means—

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- (a) in the case of a certificate with respect to a scheme relating to the England and Wales Milk Marketing Board, the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly,
- (b) in the case of a certificate with respect to a scheme relating to the board established under the Milk Marketing Scheme (Northern Ireland) 1989, the Department of Agriculture for Northern Ireland, and
- (c) in the case of a certificate with respect to any other scheme, the Secretary of State.

Modifications etc. (not altering text)

- C8** Sch. 1 Pt. I para. 28 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)

Marginal Citations

- M12** 1891 c. 39.

Stamp duty reserve tax

- 29 No agreement made in pursuance of an approved scheme shall give rise to a charge to stamp duty reserve tax.

Modifications etc. (not altering text)

- C9** Sch. 2 Pt. I para. 29 modified (retrospectively with effect as mentioned in s. 203(6) of the amending Act) by 1996 c. 8, s. 203(6)(7)

Interpretation

- 30 (1) In this Part of this Schedule, references to relevant successor, in relation to a milk marketing board, are to a body—
- (a) to which property, rights or liabilities of the board are transferred under section 11 above, and
 - (b) which is a qualifying body in relation to the transfer.
- (2) In this Part of this Schedule, references to relevant successor, in relation to a subsidiary of a milk marketing board, are to a body—
- (a) to which property, rights or liabilities of the subsidiary are transferred under section 11 above, and
 - (b) which, by virtue of paragraph 31(1)(a), (c), (d) or (e) below, is a qualifying body in relation to the transfer.
- 31 (1) For the purposes of this Part of this Schedule, a body is a qualifying body, in relation to a transfer under an approved scheme, if it is—
- (a) a development council established under the ^{M13}Industrial Organisation and Development Act 1947,
 - (b) a company registered under the ^{M14}Companies Act 1985 which was, immediately before the day on which this Act is passed, a 100 per cent. subsidiary of the board to which the scheme relates,

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- (c) a company registered under the Companies Act 1985 in relation to which either or both of the first and second conditions are met and in relation to which the third condition is met,
 - (d) a society registered under the ^{M15}Industrial and Provident Societies Act 1965 in relation to which either or both of the fourth and fifth conditions are met, or
 - (e) a company registered under the Companies Act 1985 in relation to which the sixth condition is met.
- (2) The first condition is that—
- (a) the scheme makes provision for the issue or transfer of shares in the company to members of the relevant class without any consideration, or with only a nominal consideration, being provided by the members acquiring them, and
 - (b) the members of that class who fall within the provision represent at least 90 per cent. of the total number of members of that class.
- (3) The second condition is that—
- (a) the company is one of a number of companies registered under the Companies Act 1985 in relation to each of which the scheme provides as mentioned in sub-paragraph (2)(a) above, and
 - (b) the members of the relevant class who fall within the provision relating to the company, when taken together with the members of that class who fall within the provision, or provisions, relating to the other company, or companies, represent at least 90 per cent. of the total number of members of that class.
- (4) The third condition is that, immediately after the transfer, at least 90 per cent. of the ordinary share capital of the company consists of shares which—
- (a) are owned directly or indirectly by the board to which the scheme relates,
 - (b) have been issued or transferred under the scheme to members of the relevant class without any consideration, or with only a nominal consideration, being provided by the members acquiring them,
 - (c) have been issued or transferred under the scheme to persons who are, or have been, registered producers in settlement of claims against the board to which the scheme relates, being claims arising out of the supply or production of milk,
 - (d) have been issued or transferred under the scheme to trustees on terms which provide for their transfer to members of the relevant class, or
 - (e) are held by persons to whom they have been issued or transferred under the scheme in connection with securing the quotation of the company on the Stock Exchange.
- (5) The fourth condition is that—
- (a) the scheme provides for membership of the society to be open to members of the relevant class, and
 - (b) the members of that class who fall within the provision represent at least 90 per cent. of the total number of members of that class who are engaged in milk production on the day of the transfer.
- (6) The fifth condition is that—
- (a) the society is one of a number of societies registered under the ^{M16}Industrial and Provident Societies Act 1965 in relation to each of which the scheme provides as mentioned in sub-paragraph (5)(a) above, and

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- (b) the members of the relevant class who fall within the provision relating to the society, when taken together with the members of that class who fall within the provision, or provisions, relating to the other society, or societies, represent at least 90 per cent. of the total number of members of that class who are engaged in milk production on the day of the transfer.
- (7) The sixth condition is that the company is a 100 per cent. subsidiary of a company falling within paragraph (c) of sub-paragraph (1) above or of a society falling within paragraph (d) of that sub-paragraph.
- (8) For the purposes of this paragraph, a body corporate shall be deemed to be a 100 per cent. subsidiary of another body corporate if and so long as the whole of its ordinary share capital is owned directly or indirectly by that other body corporate.
- (9) In determining for the purposes of this paragraph whether under an approved scheme shares are issued or transferred without any consideration, or with only a nominal consideration, being provided by the persons acquiring them, there shall be disregarded any depreciatory effect of transfers under the scheme on the value of a right to participate in the winding up of the board to which the scheme relates.
- (10) For the purposes of this paragraph, the relevant class, in relation to an approved scheme, consists of those to whom property or rights are to be distributed under the scheme by virtue of their being, or having been, registered producers.
- (11) Subsections (4) to (10) of section 838 of the ^{M17}Income and Corporation Taxes Act 1988 (rules for determining amount of share capital owned) shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- (12) In this paragraph—
- (a) “ordinary share capital” has the same meaning as in the Income and Corporation Taxes Act 1988,
- (b) “owned directly or indirectly”, in relation to a body corporate, means owned directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate, and
- (c) references to ownership shall be construed as references to beneficial ownership.

Modifications etc. (not altering text)

C10 Sch. 2 Pt. I para. 31(4) modified (retrospectively) by 1996 c. 8, s. 203(1)(4)

Marginal Citations

M13 1947 c. 40.

M14 1985 c. 6.

M15 1965 c. 12.

M16 1965 c. 12.

M17 1988 c. 1.

Northern Ireland

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- (a) “approved scheme” includes a scheme of reorganisation approved under any provision in Northern Ireland legislation corresponding to section 3 above (with any variation approved under any provision in such legislation corresponding to section 5 above) and in relation to which approval has not been withdrawn under any provision in such legislation corresponding to section 6 above, and
 - (b) “milk marketing board” includes the board established under the Milk Marketing Scheme (Northern Ireland) 1989.
- (2) In the application of this Part of this Schedule by virtue of sub-paragraph (1) above—
- (a) any reference to section 11 above shall be construed as a reference to any corresponding provision in Northern Ireland legislation;
 - (b) any reference to the ^{M18}Industrial and Provident Societies Act 1965 shall be construed as a reference to the ^{M19}Industrial and Provident Societies Act (Northern Ireland) 1969;
 - (c) any reference to the ^{M20}Companies Act 1985 shall be construed as a reference to the ^{M21}Companies (Northern Ireland) Order 1986;
 - (d) “registered producers”, in relation to the board established under the Milk Marketing Scheme (Northern Ireland) 1989, means persons registered as producers under the marketing scheme administered by the board; and
 - (e) “subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986.
- (3) In paragraph 27 above, the reference to section 17 above shall be construed as including a reference to any corresponding provision in Northern Ireland legislation.

Marginal Citations

M18 1965 c. 12.

M19 1969 c. 24 (N.I.).

M20 1985 c. 6.

M21 S.I. 1986/1032 (N.I. 6).

Changes to legislation:

There are currently no known outstanding effects for the Agriculture Act 1993, Part I.