SCHEDULES

SCHEDULE 24

Section 71.

CREATIVE ARTISTS: RELIEF FOR FLUCTUATING PROFITS

PART 1

NEW SCHEDULE 4A TO THE TAXES ACT 1988

1 The Schedule inserted after Schedule 4 to the Taxes Act 1988 is as follows—

"SCHEDULE
4A

CREATIVE ARTISTS: RELIEF FOR FLUCTUATING PROFITS

Introduction

1 This Schedule enables an individual ("the taxpayer") to make a claim (an "averaging claim") if his profits from a qualifying trade, profession or vocation (his "relevant profits") fluctuate from one tax year to the next.

Qualifying trade, profession or vocation

2 (1) A trade, profession or vocation is a "qualifying trade, profession or vocation" if the taxpayer's profits from it—

(a) are derived wholly or mainly from qualifying creative works, and

(b) are chargeable to tax under Case I or II of Schedule D.

(2) In sub-paragraph (1) "qualifying creative works" means—

(a) literary, dramatic, musical or artistic works, or

(b) designs,

created by the taxpayer personally or, where the trade, profession or vocation is carried on by the taxpayer in partnership, by one or more of the partners personally.

Circumstances in which claim may be made

3 (1) An averaging claim may be made if the taxpayer has been carrying on the qualifying trade, profession or vocation in two consecutive tax years and either—

(a) his relevant profits for one of the tax years are less than 75% of his relevant profits for the other, or

(b) his relevant profits for one (but not both) of the tax years are nil.

(2) For the purposes of paragraph 4 (years in respect of which averaging claim may be made) an averaging claim relates to both of the years involved.

Years in respect of which claim may be made

4 (1) An averaging claim may not be made in relation to a tax year if an averaging claim in respect of the same qualifying trade, profession or vocation has already been made in relation to a later tax year.

(2) An averaging claim may not be made in relation to a tax year in which—

(a) the taxpayer starts, or permanently ceases, to carry on the trade, profession or vocation, or

(b) the trade, profession or vocation begins or ceases to be a qualifying trade, profession or vocation.

(3) An averaging claim may be made in relation to a tax year which was the later year on a previous averaging claim.

Time limit for claim

5 An averaging claim must be made not later than twelve months after the 31st January next following the end of the later of the tax years to which it relates.

This is subject to paragraph 10(2) (extended time limit where profits adjusted for some other reason).

Adjustment of profits on averaging claim

6 (1) Where the taxpayer is entitled to make, and makes, an averaging claim, the amount taken to be his profits from the qualifying trade, profession or vocation for each of the tax years to which the claim relates is adjusted in accordance with this paragraph.

(2) If—

(a) the taxpayer's relevant profits for one of the years amount to 70% or less of his relevant profits for the other year, or

(b) the taxpayer's relevant profits for one (but not both) of the years are nil,

the amount of the adjusted profits for each of the years to which the claim relates is the average of the relevant profits for the two years.

(3) If the taxpayer's relevant profits for one of the years amount to more than 70%, but less than 75%, of his relevant profits for the other year, the amount of the profits in each of the years is calculated as follows, so as to reduce the variation between them.

Step 1

The amount of the adjustment is given by the formula—

$$(D \times 3) - (P \times 0.75)$$

where—

D is the difference between the taxpayer's relevant profits for the two tax years, and

P is the taxpayer's relevant profits for the year in which those profits are higher.

Step 2

Add the amount of the adjustment to the taxpayer's relevant profits for the year in which those profits are lower.

The result is the amount of the adjusted profits for that year.

Step 3

Subtract the amount of the adjustment from the taxpayer's relevant profits for the year in which those profits are higher.

The result is the amount of the adjusted profits for that year

(4) Subject to the following provisions of this Schedule, the adjusted profits are taken to be the taxpayer's relevant profits for the years to which the claim relates for all the purposes of the Income Tax Acts, including the further application of this Schedule.

How averaging claim is given effect

7 (1) An averaging claim relating to two tax years ("the earlier year" and "the later year") is given effect in the later year.

(2) In so far as the claim involves an adjustment to the profits for the earlier year it is treated as a claim for the amount of the difference between—

(a) the amount in which the taxpayer is chargeable to tax for the earlier year ("amount A"), and

(b) the amount in which he would be so chargeable if effect were given to the adjustment in that year ("amount B").

(3) That claim is given effect in the later year by increasing the amount referred to in section 59B(1)(b) of the Management Act (aggregate amount of payments on account made by the taxpayer) or, as the case may require, by increasing the amount of tax payable.

(4) Where effect falls to be given to two or more associated claims, amounts A and B above shall each be determined on the assumption that effect could have been, and had been, given to the other claim or claims in relation to the earlier year.

(5) Where this paragraph applies twice in relation to the same tax year, the increase or reduction in the amount of tax payable for that year as a result of the earlier application shall be disregarded in determining amounts A and B above for the purposes of the later application.

Extension of time for making other claims

8 (1) A claim by the taxpayer for relief under any other provision of the Income Tax Acts for either of the years to which an averaging claim relates ("the other claim")—

(a) is not out of time if made on or before the last date on which the averaging claim could have been made, and

(b) if already made, may be amended or revoked on or before that date.

(2) If the other claim is made by being included in a return, the reference in sub-paragraph (1)(b) to amending or revoking the claim shall be read as a reference to amending the return by amending or omitting the claim.

Giving effect to late claim for other relief

9 (1) This paragraph applies where—

(a) the taxpayer makes or amends a claim for relief under any other provision of the Income Tax Acts for either of the years to which an averaging claim relates, and

(b) the making or amendment of the claim would be out of time but for paragraph 8.

(2) The claim or amendment is given effect in the later year.

(3) In so far as the claim or amendment relates to income of the earlier year, the amount claimed, or (as the case may be) the increase or reduction in the amount claimed, shall be equal to the difference between—

(a) the amount in which the taxpayer is chargeable to tax for the earlier year ("amount A"), and

(b) the amount in which he would be so chargeable on the assumption that effect could be, and was, given to the claim or amendment in relation to that year ("amount B").

(4) That claim or amendment is given effect in the later year by increasing the amount referred to in section 59B(1)(b) of the Management Act (aggregate amount of payments on account made by the taxpayer) or, as the case may require, by increasing the amount of tax payable.

(5) Where effect falls to be given to two or more associated claims, amounts A and B above shall each be determined on the assumption that effect could have been, and had been, given to the other claim or claims in relation to the earlier year.

(6) In this paragraph "amend" includes revoke and "amendment" has a corresponding meaning.

Effect of later adjustment of profits

10 (1) If after the taxpayer has made an averaging claim, his relevant profits in either or both of the tax years to which the claim relates are adjusted for some other reason—

(a) the averaging claim shall be disregarded, and

(b) a further averaging claim may be made in relation to the taxpayer's relevant profits as adjusted.

(2) A further averaging claim is not out of time provided it is made not later than twelve months after the 31st January next following the tax year in which the adjustment for the other reason is made.

Interpretation of references to profits

11 (1) References in this Schedule to the taxpayer's profits from a qualifying trade, profession or vocation are to profits before making deductions for losses sustained in any tax year.

(2) If the taxpayer sustains a loss in the qualifying trade, profession or vocation in any tax year, the profits of that year for the purposes of this Schedule are nil.

This shall not be read as preventing the taxpayer from obtaining relief under the Income Tax Acts for a loss sustained by him in that or any other tax year.

Interpretation of references to amount chargeable to tax

12 In this Schedule any reference to the amount in which a person is chargeable to tax is a reference to the amount in which he is so chargeable after taking into account any relief or allowance for which a claim is made.

Meaning of "claim" and "associated claim"

13 (1) In this Schedule any reference to a claim includes a reference to an election or notice.

(2) For the purposes of this Schedule, two or more claims made by the same person are associated with each other if each of them is any of the following—

(a) a claim to which this Schedule applies, or

(b) a claim to which Schedule 1B to the Management Act applies (other claims involving more than one year to be given effect in later year),

and the same tax year is the earlier year in relation to each of those claims.

(3) In sub-paragraph (2)—

(a) the reference to a claim to which this Schedule applies includes amendments and revocations to which paragraph 9 above applies;

(b) the reference to a claim to which Schedule 1B to the Management Act applies includes amendments and revocations to which paragraph 4 of that Schedule applies.

Meaning of "tax year"

14 In this Schedule a "tax year" means a year of assessment.".

PART 2

CONSEQUENTIAL AMENDMENTS

2 (1) In section 46C(3) of the Taxes Management Act 1970 (c. 9) (jurisdiction of Special Commissioners over certain claims) for paragraph (d) substitute—

"(d) sections 527 and 536 (reliefs in respect of royalties);".

(2) This paragraph applies in relation to claims made in respect of payments actually receivable on or after 6th April 2001.

3 (1) In Schedule 1B to that Act (claims for relief involving two or more years), in paragraph 1 (preliminary definitions) for sub-paragraphs (2) and (3) substitute—

"(2) For the purposes of this Schedule, two or more claims made by the same person are associated with each other if each of them is any of the following—

(a) a claim to which this Schedule applies, or

(b) a claim to which Schedule 4A to the principal Act applies (creative artists: relief for fluctuating profits),

and the same year of assessment is the earlier year in relation to each of those claims.

(3) In sub-paragraph (2) above, any reference to claims includes—

(a) in the case of a claim to which this Schedule applies, a reference to amendments and revocations to which paragraph 4 below applies;

(b) in the case of a claim to which Schedule 4A to the principal Act applies, a reference to amendments and revocations to which paragraph 9 of that Schedule applies.".

(2) This paragraph applies for the year 2000-01 and subsequent years of assessment.

4 (1) In section 537 of the Taxes Act 1988 (application of sections 534, 535 and 536 for public lending right as for copyright)—

(a) for "Sections 534, 535 and 536" substitute "Section 536", and

(b) for "they have" substitute "it has".

(2) This paragraph applies in relation to payments actually receivable on or after 6th April 2001.