

SCHEDULES

SCHEDULE 29

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

PART 14

COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement date

- 117 (1) The commencement date for the purposes of this Schedule is 1st April 2002.
- (2) In this Part—
- “after commencement” means on or after that date and “before commencement” means before that date; and
 - “the existing law” means the law as it was before commencement.

Application of Schedule to assets created or acquired after commencement

- 118 (1) Except as otherwise expressly provided, the provisions of this Schedule apply only to intangible fixed assets of a company (“the company”) that—
- (a) are created by the company after commencement, or
 - (b) are acquired by the company after commencement from a person who at the time of the acquisition is not a related party in relation to the company, or
 - (c) are acquired by the company after commencement from a person who at the time of the acquisition is a related party in relation to the company in the cases specified in sub-paragraph (2).

As to when assets are regarded as created or acquired, see paragraphs 120 to 125.

- (2) The cases mentioned in sub-paragraph (1)(c) in which this Schedule applies to assets acquired by the company after commencement from a related party are—
- (a) where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition;
 - (b) where the asset is acquired from a person (“the intermediary”) who acquired the asset after commencement from a third person—
 - (i) who was not at the time of that acquisition a related party in relation to the intermediary or, where the intermediary was not a company, a company in relation to which the intermediary was a related party, and
 - (ii) who is not, at the time of the acquisition by the company, a related party in relation to the company;

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- (c) where the asset was created, whether by the person from whom it is acquired or any other person, after commencement.
- (3) Intangible fixed assets to which, by virtue of sub-paragraph (1), this Schedule does not apply in the absence of express provision to that effect are referred to in this Schedule as “existing assets”.
- (4) Sub-paragraph (1) has effect subject to—
 - (a) paragraph 126 (application of Schedule to fungible assets), and
 - (b) paragraph 127 (certain assets acquired on transfer of a business treated as existing assets).
- (5) The following paragraphs contain provision for the application of this Schedule in relation to certain existing assets—
 - paragraphs 128 and 129 (application of Schedule to certain existing assets);
 - paragraphs 130 to 132 (application of roll-over relief in relation to certain existing assets).
- (6) Nothing in this paragraph shall be read as restricting the application of this Schedule in accordance with paragraph 119 (application of Schedule to royalties).

Application of Schedule to royalties

- 119 (1) This Schedule—
- (a) applies to royalties recognised for accounting purposes after commencement, and
 - (b) does not apply to royalties recognised for accounting purposes before commencement,
- subject to the following provisions.
- (2) To the extent that royalties have been brought into account before commencement, they shall not be brought into account again under this Schedule after commencement.
 - (3) To the extent that royalties would have been brought into account before commencement if the provisions of this Schedule had been in force, and were not so brought into account, they shall be brought into account immediately after commencement.
 - (4) For the purposes of this paragraph an amount is “brought into account” if—
 - (a) it is brought into account for tax purposes, or
 - (b) it would have been so brought into account if the person concerned had been within the charge to corporation tax.

Assets regarded as created or acquired when expenditure incurred

- 120 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to all intangible assets except those to which paragraph 121 or 122 applies (certain internally-generated assets).
- (2) An intangible asset to which this paragraph applies is regarded as created or acquired after commencement to the extent that expenditure on its creation or acquisition is incurred after commencement.

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As to whether expenditure on the creation or acquisition of the asset was incurred after commencement, see paragraphs 123 to 125.

(3) If only part of the expenditure on the creation or acquisition of the asset is incurred after commencement—

- (a) this Schedule has effect as if there were a separate asset representing the expenditure so incurred, and
- (b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the expenditure not so incurred.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

Internally-generated goodwill: whether created before or after commencement

121 For the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) internally-generated goodwill is regarded as created before (and not after) commencement if the business in question was carried on at any time before commencement by the company or a related party.

Certain other internally-generated assets: whether created before or after commencement

122 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to an internally-generated asset representing expenditure that under the existing law is not qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) (“non-qualifying expenditure”).

(2) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure—

- (a) this Schedule has effect as if there were separate assets representing the non-qualifying expenditure and the other expenditure, and
- (b) if this Schedule does not apply to the former, the enactments that apply where this Schedule does not apply also have effect as if there were a separate asset representing the non-qualifying expenditure.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

(3) An asset to which this paragraph applies is regarded for the purposes of paragraph 118 as created before (and not after) commencement if the asset in question was held at any time before commencement by the company or a related party.

Expenditure on acquisition treated as incurred when recognised for accounting purposes

123 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) the general rule is that expenditure on the acquisition of an asset is treated as incurred when it is recognised for accounting purposes.

(2) This is subject to—

paragraph 124 (chargeable gains rules to be followed in certain cases), and
paragraph 125 (capital allowances rule to be followed in certain cases).

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When expenditure treated as incurred: chargeable gains rule to be followed in certain cases

- 124 For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the acquisition of the asset that—
- (a) does not qualify for any form of tax relief against income under the existing law, and
 - (b) would be treated as incurred after commencement under the general rule in paragraph 123,
- shall be treated as incurred before commencement if the asset is (or would be) treated as disposed of (and thus acquired) before commencement for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).

When expenditure treated as incurred: capital allowances general rule to be followed in certain cases

- 125 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the creation or acquisition of an asset that under the existing law is qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) is treated as incurred when an unconditional obligation to pay it comes into being.
- (2) For this purpose there may be an unconditional obligation to pay although the whole or part of the expenditure is not required to be paid until a later date.

Application of Schedule to fungible assets

- 126 (1) The provisions of this paragraph have effect for the purposes of this Part in relation to assets to which paragraph 107 applies (treatment of fungible assets as single asset)
- (2) Paragraph 107 applies as if—
- (a) existing assets, and
 - (b) intangible fixed assets that are not existing assets,
- were assets of different kinds.
- (3) Where paragraph 107 applies (by virtue of sub-paragraph (2) or otherwise)—
- (a) a single asset comprising existing assets is treated as itself being an existing asset, and
 - (b) a single asset comprising intangible fixed assets that are not existing assets is treated as itself being an asset to which this Schedule applies.
- (4) The realisation by a company of an intangible fixed asset that apart from sub-paragraph (2) would be regarded as part of a single asset comprising both existing assets and assets that are not existing assets shall be regarded as diminishing the single asset of the company comprising existing assets in priority to diminishing the single asset of the company comprising assets that are not existing assets.
- (5) Intangible fixed assets acquired by a company that would not otherwise be regarded as existing assets shall be treated as existing assets to the extent that they are to be identified, in accordance with the following rules, with existing assets realised by the company.
- (6) The rules are—

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- (a) that assets acquired are to be identified with existing assets of the same kind realised by the company within the period beginning 30 days before and ending 30 days after the date of the acquisition;
- (b) that assets realised earlier are to be identified before assets realised later;
- (c) that assets acquired earlier are to be identified before assets acquired later.

The reference in paragraph (a) to assets “of the same kind” are to assets that are, or but for sub-paragraph (2) would be, treated by virtue of paragraph 107 as part of a single asset.

Certain assets acquired on transfer of business treated as existing assets

127 (1) This paragraph applies where—

- (a) an asset that is an existing asset in the hands of a company (“the transferor company”) is transferred to another company (“the transferee company”), and
- (b) the transfer is one in relation to which—
 - (i) section 139 of the Taxation of Chargeable Gains Act 1992 (c. 12) (reconstruction involving transfer of business), or
 - (ii) section 140A of that Act (transfer of UK trade to company resident in another member State),

applies with the effect that the transferor company is treated for the purposes of that Act as disposing of the asset for a consideration that secures that neither a gain nor a loss accrues to that company.

- (2) Where this paragraph applies the asset shall be treated for the purposes of this Schedule as an existing asset in the hands of the transferee company.
- (3) This paragraph does not apply where the transfer mentioned in sub-paragraph (1) occurred before 28th June 2002.

Application of Schedule to certain existing telecommunication rights

128 (1) This Schedule applies to an existing asset consisting of a licence or other right within Schedule 23 to the Finance Act 2000 (c. 17) (certain telecommunication rights).

- (2) This Schedule has effect in relation to the asset—
 - (a) as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement, and
 - (b) as if amounts brought into account for tax purposes in earlier accounting periods under Schedule 23 to the Finance Act 2000 (c. 17) had been so brought into account under this Schedule.
- (3) If the asset—
 - (a) was acquired before the beginning of the first accounting period to which this Schedule applies in relation to it, and
 - (b) is a chargeable intangible asset immediately after the beginning of that period,

it shall be treated for the purposes of Part 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of that period.

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- (4) Schedule 23 to the Finance Act 2000 shall cease to have effect for the purposes of corporation tax as regards accounting periods ending after commencement.

Application of Schedule to existing Lloyd's syndicate capacity

- 129 (1) This Schedule applies to an existing asset consisting of the rights of a member of Lloyd's under a syndicate within the meaning of Chapter 5 of Part 4 of the Finance Act 1994 (c. 9) (taxation of corporate members of Lloyd's).
- (2) This Schedule has effect in relation to the asset as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement.
- (3) For the purposes of paragraph 9(5) (writing down on accounting basis: calculation of amount of debit for tax purposes) as it applies to the first accounting period to which this Schedule applies in relation to such an asset, the tax written down value of the asset shall be computed under paragraph 27 as if the debits to be deducted under that paragraph included all accounting losses previously recognised in respect of the asset, whether or not they gave rise to a deduction for tax purposes.
- (4) If the asset—
- (a) was acquired before the beginning of the first accounting period to which this Schedule applies in relation to it, and
 - (b) is a chargeable intangible asset immediately after the beginning of that period,
- it shall be treated for the purposes of Part 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of that period.

Roll-over relief: application in relation to disposal of existing asset after commencement

- 130 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where a company disposes of an existing asset after commencement.
- References in this paragraph to the disposal of an asset have the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12).

- (2) Part 7 applies in accordance with this paragraph with the following adaptations—
- (a) for references to the realisation of the old asset substitute references to its disposal;
 - (b) for references to its being a chargeable intangible asset substitute references to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992 (c. 12);
 - (c) for references to the proceeds of its realisation substitute references to the net proceeds of disposal under that Act; and
 - (d) for references to its cost recognised for tax purposes substitute references to the cost under that Act.
- (3) For the purposes of sub-paragraph (2)(b) an asset is a chargeable asset within the Taxation of Chargeable Gains Act 1992 in relation to a company at any time if, were the asset to be disposed of at that time, any gain accruing to the company on the disposal would be a chargeable gain within the meaning of that Act, and either—
- (a) at that time the company is resident or ordinarily resident in the United Kingdom, or

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- (b) the gain would form part of the company's chargeable profits for corporation tax purposes by virtue of section 10(3) of that Act,
unless the company (were it to dispose of the asset at that time) would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gain accruing to it on the disposal.
- (4) For the purposes of sub-paragraph (2)(c) the net proceeds of disposal under the Taxation of Chargeable Gains Act 1992 shall be taken to be the amount or value of the consideration for the disposal reduced by any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act.
- (5) For the purposes of sub-paragraph (2)(d) the cost under the Taxation of Chargeable Gains Act 1992 shall be taken to be an amount equal to the difference between the net proceeds of disposal as defined in sub-paragraph (4) and the amount of the chargeable gain on the disposal.
- (6) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
- (7) Where a company is entitled to relief under Part 7 by virtue of this paragraph, it is treated for the purposes of the Taxation of Chargeable Gains Act 1992 as if the consideration for the disposal of the old asset were reduced by the amount available for relief.

This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.

Roll-over relief: application in relation to degrouping charge on existing asset arising after commencement

- 131 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where—
- (a) a company is treated by virtue of subsection (3) or (6) of section 179 of the Taxation of Chargeable Gains Act 1992 (degrouping charge) as having sold and reacquired an existing asset, and
 - (b) the time at which by virtue of subsection (4) or (8) of that section the gain is treated as accruing is after commencement.
- (2) Part 7 applies in accordance with this paragraph with the adaptations specified in paragraph 130(2) and the following further adaptations (which correspond to those in paragraph 65)—
- (a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset throughout the period during which it was held by the company substitute a reference to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992 (c. 12) throughout the period during which it was held by the company referred to in section 179 of that Act as company B;
 - (b) in paragraph 39(1) (conditions to be met in relation to expenditure on other assets), for the references to the date of realisation of the old asset substitute references to—
 - (i) in a case within subsection (3) of section 179 of that Act, the time at which the gain is treated as accruing under subsection (4) of that section, and

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- (ii) in a case within subsection (6) of that section, the time at which the gain is treated as accruing under subsection (8) of that section;
 - (c) references to the proceeds of realisation shall be read as references to the amount of the consideration for which the company is treated under that Act as having sold and reacquired the asset.
- (3) Paragraph 130(3) (meaning of “chargeable asset”) applies for the purposes of subparagraph (2)(a) of this paragraph.
 - (4) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
 - (5) A company entitled to relief under Part 7 by virtue of this paragraph is treated for the purposes of the Taxation of Chargeable Gains Act 1992 as if the consideration for the disposal of the old asset were reduced by the amount available for relief.

This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.

Roll-over relief: transitory interaction with relief on replacement of business asset

- 132 (1) In relation to the disposal after commencement of an asset that is both—
- (a) an asset of a class specified in section 155 of the Taxation of Chargeable Gains Act 1992 (assets qualifying for roll-over relief on replacement of business asset), and
 - (b) an intangible fixed asset,
- the period specified in section 152(3) of that Act (period within which new assets must be acquired) does not include, and may not be extended so as to include, any period after commencement.
- (2) Subject to that, relief may be claimed in such a case either under Part 7 of this Schedule (roll-over relief on realisation and reinvestment) or under section 152 or 153 of the Taxation of Chargeable Gains Act 1992, or partly under Part 7 and partly under section 152 or 153.
 - (3) For the purposes of any such claim under section 152 or 153 any expenditure on other assets within the meaning of Part 7 shall be treated as if it were an amount applied as mentioned in section 152(1).
 - (4) For the purposes of any such claim under Part 7 any amount applied as mentioned in section 152(1) shall be treated as if it were expenditure incurred on other assets.
 - (5) Classes 4 to 7 in section 155 of the Taxation of Chargeable Gains Act 1992 (c. 12) (goodwill and various types of quota) shall cease to have effect for the purposes of corporation tax as regards the acquisition of new assets that are chargeable intangible assets.
 - (6) References in this paragraph to the disposal of an asset have the same meaning as in that Act.