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## SCHEDULES.

### SCHEDULE 18

#### SUPPLEMENTARY PROVISIONS ABOUT CLOSE COMPANIES.

##### PART II

##### PROVISIONS SPECIALLY RELATED TO SHORTFALLS IN OR APPORTIONMENT OF DISTRIBUTIONS.

###### *Cessation of trade and liquidations.*

- 12 (1) Where a close company ceases to carry on the trade, or the business of holding investments, in which its activities wholly or mainly consisted, then, subject to sub-paragraph (2) below but notwithstanding any other provision limiting the required standard of distributions, the required standard for any accounting period in which that event occurs, or which ends in or with the twelve months ending with that event, shall be calculated on the whole, instead of sixty per cent., of the estate or trading income (if any) taken into account and without any deduction in respect of the requirements of the business.
- (2) Where sub-paragraph (1) above applies to an accounting period and the company shows that the company could not make distributions up to the required standard without prejudice to the claims of creditors (excluding those mentioned in sub-paragraph (3) below), then for purposes of section 77 of this Act so much of the shortfall as the company shows could not be avoided without prejudice to those claims shall be disregarded.

Where this sub-paragraph applies a reference to it shall be substituted in section 78(3) of this Act for the reference to section 77(4).

- (3) The creditors excluded for the purpose referred to in sub-paragraph (2) above are all participators and associates of participators, and all creditors in respect of debts originally created in favour of or due to a person who was then a participator or associate of a participator:

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

- (a) arose in the ordinary course of the company's trade or the company's business of holding investments and also in the ordinary course of a trade or profession of the creditor or, as the case may be, of the participator or associate who was the original creditor ; or
- (b) is a debt for remuneration chargeable to income tax under Schedule E; or
- (c) is a debt for any rent or other payment due for the use of tangible property or of copyright in a literary, dramatic, musical or artistic work within the meaning of the Copyright Act 1956 (or any corresponding right under the law of a country to which that Act does not extend), and not representing more than a reasonable commercial consideration for that use.

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- 13 (1) Paragraph 12 above shall apply where a resolution is passed or an order is made for the winding up of a close company, or where any other act is done for a like purpose in the case of a winding up otherwise than under the Companies Act 1948, as that paragraph applies in a case falling within sub-paragraph (1) of it.
- (2) Where an event mentioned in sub-paragraph (1) above occurs in the case of a close company, then any assessment on the company in respect of a shortfall in distributions for an accounting period which ends in or with the twelve months ending with that event, shall be an assessment as for a distribution made immediately before that event, and the amount due under the assessment shall be recoverable accordingly.
- (3) Where after any such event the company carries on a trade or a business of holding investments, then sections 77 and 78 of this Act shall, notwithstanding the winding up, continue to apply as if the company were not being wound up, and paragraph 12 above shall apply for any accounting period ending after the date of that event.