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SCHEDULES.

SCHEDULE 18

SUPPLEMENTARY PROVISIONS ABOUT CLOSE COMPANIES.

PART II

PROVISIONS SPECIALLY RELATED TO SHORTFALLS IN OR APPORTIONMENT OF DISTRIBUTIONS.

Descriptions of profits or income.

- 7 (1) The " distributable profits " of a company for an accounting period shall be the amount on which corporation tax falls finally to be borne, less the amount of that tax, but with additions equal to—
- (a) any deduction made by virtue of section 87 of this Act by way of allowance in respect of any source of income; and
 - (b) any franked investment income, less the amount of any relief given against it for management expenses or charges on income ;
 - (c) any group income.
- (2) The " distributable income " of a company for an accounting period shall be the amount of the distributable profits exclusive of the part attributable to chargeable gains, which shall be taken to be the amount of the chargeable gains on which corporation tax is finally borne less the amount of that tax.
- (3) The " distributable investment income " of a company for an accounting period shall be the amount of the distributable income exclusive of the part attributable to estate or trading income and less whichever is the smaller of—
- (a) ten per cent. of the estate or trading income ; and
 - (b) £200 or, if the accounting period is of less than twelve months, a proportionately reduced amount.
- (4) The " estate or trading income " of a company means the income of the following descriptions:—
- (a) income which is not investment income for purposes of paragraph 8(1) below ; and
 - (b) income which is chargeable to tax under Schedule B or which is chargeable to tax under Schedule D and, not being yearly or other interest, arises from the ownership or occupation of land (including any interest in or right over land) or from the letting furnished of any building or part of a building.
- (5) The amount for part of an accounting period of any description of income referred to in this paragraph shall be a proportionate part of the amount for the whole period, and, in determining the amount for any period of any description of income, any deduction from the company's profits for charges on income, expenses of management or other

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amount deductible from profits of more than one description shall be treated as made from such profits, and in such proportions from those profits, as is appropriate.

" Trading company " and " trading group " .

- 8 (1) For purposes of the provisions of this Act relating to close companies, including this Schedule, a " trading company " is any company which exists wholly or mainly for the purpose of carrying on a trade and any other company whose income does not consist mainly of investment income, that is to say, income which, if the company were an individual, would not be earned income; but for this purpose any amount which is apportioned to a company under this Act, and any such amount as, in relation to a company to which section 245 of the Income Tax Act 1952 applied, is directed by any enactment to be treated as investment income, shall be deemed to be income of the company and to be investment income.
- (2) For the said purposes a company is to be treated as a " member of a trading group " if, but only if—
- (a) it exists wholly or mainly for the purpose of co-ordinating the administration of a group of two or more companies each of which is under its control and exists wholly or mainly for the purpose of carrying on a trade ; or
 - (b) it is under the control of another company resident in the United Kingdom and not itself under the control of a third company, and it exists wholly or mainly for the purpose of a trade or trades carried on by that other company or by a group which, consisting of that other company and a company or companies also under its control and resident in the United Kingdom, exists wholly or mainly for the purpose of carrying on the said trade or trades:

Provided that a company shall not be treated as a member of a trading group by reason of any company having the control of another, if that control is exercised through a company which is not resident in the United Kingdom or through a company whose control depends on a holding a profit on the sale of which would be treated as a trading receipt of the company.

Amounts to be taken into account as distributions for accounting periods.

- 9 (1) For the purpose of the provisions of this Act relating to shortfalls in the distributions of a close company the distributions for an accounting period shall be taken, subject to sub-paragraph (2) below, to consist of—
- (a) any dividends which are paid for the period and paid during or within twelve months after the period; and
 - (b) any amount by which the directors' remuneration paid for the period exceeds the deduction allowed for it in computing the income of the period ; and
 - (c) all distributions made in the period except dividends which in relation to any previous period would fall under paragraph (a) above.
- (2) Where a period of account is not an accounting period, dividends which, if it were an accounting period, would be treated under sub-paragraph (1)(a) above as distributions for that accounting period shall be apportioned to any accounting period or part of an accounting period falling within the period of account in proportion to the distributable income of each such period or part.

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Procedure.

- 10 The following provisions of the Income Tax Act 1952 (which relate to appeals and to powers to obtain information) that is to say, section 248(2) and (3), section 250(3), (4) and (5) and section 264, shall apply in relation to section 78 of this Act with the necessary adaptations, references to a company to which section 245 of that Act applies or to an investment company being read as references to a close company and, in section 264(1), as extending to any company which appears to the Board to be a close company; and the powers conferred on the Board in relation to section 78 of this Act by the said sections 250(3) and 264 shall be exercisable by the inspector in relation to section 77 of this Act.
- 11 (1) A close company may, at any time after the general meeting at which the accounts for any period of account are adopted, forward to the inspector a copy of those accounts, together with a copy of the report, if any, of the directors for that period, and such further information, if any, as it may think fit, and may request the inspector to proceed under this paragraph in relation to any accounting period comprised in that period of account :
- Provided that this sub-paragraph shall not apply if the company is neither a trading company nor a member of a trading group and has no estate or trading income.
- (2) Where the inspector receives a request made in accordance with sub-paragraph (1) above in relation to any accounting period, then subject to sub-paragraph (3) below he shall, within three months after receipt of the request, intimate to the company whether or not he proposes to make an assessment on the company in respect of the accounting period under section 77 of this Act.
- (3) On receiving a request made in accordance with sub-paragraph (1) above the inspector may, not later than three months after receipt of the request, call on the company to furnish him with such further particulars as he may reasonably require ; and if he does so, the time for giving the intimation required by sub-paragraph (2) above shall not expire before three months after he has been furnished with those particulars.
- (4) Where the inspector receives a request made in accordance with sub-paragraph (1) above in relation to any accounting period, and does not within the time limited by sub-paragraphs (2) and (3) intimate his intention to make an assessment in respect of the period, no such assessment shall be made unless either—
- (a) the information accompanying the request, and any further particulars furnished to the inspector in connection therewith, are not such as to make full and accurate disclosure of all facts and considerations which are material to be known to the inspector ; or
 - (b) within twelve months of the end of the period paragraph 12 or 13 below has effect in relation to the company.

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

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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.

- 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.

Transitional and consequential.

- 14 (1) Sections 77 and 78 of this Act shall not have effect as regards any accounting period or part of an accounting period falling before the beginning of the year 1966-67.
- (2) As regards income arising to a company before the end of the year 1965-66 Chapter III of Part IX of the Income Tax Act 1952 shall continue to have effect, and the

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income of a company to be taken into account under that Chapter shall include income chargeable to corporation tax, subject to the following provisions:—

- (a) in deciding under section 245 whether a company has distributed a reasonable part of its actual income account may be taken of amounts treated under paragraph 9 above as distributions for a period after the end of the year 1965-66, but only to the extent to which they exceed the required standard ; and
- (b) section 249(5) shall have effect subject to the like limitation as is imposed by section 78(7)(d) of this Act for purposes of section 78.

- (3) Where a period of account or an accounting period of a company falls partly in the year 1965-66, and partly in the year 1966-67, the two parts shall for purposes of the said Chapter III or, as the case may be, the said sections of this Act be dealt with as separate accounting periods:

Provided that—

- (a) where under paragraph 9(2) above it is necessary to apportion any dividends treated as dividends for any such period of account, it shall be done according to the proportion which the income of the part falling in the year 1965-66, computed as for the said Chapter III (but less income tax at the standard rate), bears to the distributable income for the part falling in the year 1966-67 ; and
- (b) where the distributions for any such accounting period are to be treated as including any amount in respect of the directors' remuneration, then—
 - (i) in the case of a trading company, that amount shall be apportioned between the two parts of the period, and the amount apportioned to the earlier may be treated for purposes of the said Chapter III as income distributed by the company;
 - (ii) in the case of a company other than a trading company, the whole amount shall be taken into account in the part of the period falling in the year 1966-67.

- 15 (1) In relation to income arising in or after the year 1966-67 section 411(1)(b) of the Income Tax Act 1952 (which defines " income arising under a settlement " for certain purposes relating to revocable settlements etc.) shall have effect with the substitution for the reference to Chapter III of Part IX of that Act of a reference to section 78 of this Act; and in relation to that and subsequent years of assessment there shall be substituted for subsection (4) of that section—

“(4) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if, within the meaning of Part IV of the Finance Act 1965, it is at any time in the year a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of or a beneficiary under the settlement.”

- (2) In relation to the year 1966-67 and later years of assessment—

- (a) in section 412(8)(d) of the Income Tax Act 1952 (which provides for amounts apportioned to a person under Chapter III of Part IX of that Act to be treated as his income for certain purposes) for the words " Chapter III of Part IX of this Act " there shall be. substituted the words " section 78 of the Finance Act 1965 "; and
- (b) in section 414(4) of that Act (which relates to the information a solicitor may be required to furnish under that section about transactions resulting

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in transfers of income to persons abroad) for the words from " The bodies corporate " onwards there shall be substituted the words—

“The bodies corporate mentioned in the preceding provisions of this section are bodies corporate resident or incorporated outside the United Kingdom which are, or if resident in the United Kingdom would be, close Companies, but not trading companies, within the meaning of Part IV of the Finance Act 1965.”.

- (3) Any amount apportioned under section 78 of this Act to the personal representatives of a deceased person shall be treated as included as regards surtax in the aggregate income of the estate for purposes of Part XIX of the Income Tax Act 1952.