

SCHEDULES.

SCHEDULE 7

Section 28.

AMENDMENTS OF S. 85 OF FINANCE ACT 1965.

PART I

THREE YEAR SURPLUS OF MEMBERS OF GROUPS OF COMPANIES

Reduction of three year surplus of company paying dividends to fellow member of a group.

- 1 The three year surplus of a company which is a member of a group of companies as calculated in accordance with section 85 of the Finance Act 1965 without this paragraph shall be reduced in the proportion which reduces the amount of the company's dividends taken into account under subsection (2)(b) of the said section to the amount of those dividends paid to persons other than members of the group of companies (and so that if all those dividends are paid to members of the group of companies the three year surplus shall be reduced to nothing).

Increase in certain circumstances of three year surplus of company receiving dividends from fellow member of a group.

- 2 (1) Where—
- (a) the distributable profits of a company which is a member of a group include dividends paid by one or more other members of the group, and
 - (b) one or more of those other members of the group has a notional surplus which is a three year surplus which is reduced under paragraph 1 of this Schedule, and part of the reduction is attributable to the company,
- the company's three year surplus shall be increased by (or, if otherwise of a nil amount, shall consist of) the amount, if any, produced by sub-paragraphs (2) and (3) of this paragraph.
- (2) The said amount shall not exceed the aggregate of the parts of the reductions within sub-paragraph (1)(b) above which are attributable to the company.
- (3) Subject to sub-paragraph (2) above, the said amount shall be the excess of—
- (a) what the company's excess of dividends over distributable profits would be if the dividends paid to the company by each member of the group within sub-paragraph (1)(b) above were reduced by an amount equal to the company's part of that member's excess of dividends over distributable profits, over
 - (b) what the company's excess of dividends over distributable profits actually is, (and so that if there is no actual excess at (b) the said amount is, subject to sub-paragraph (2) above, the amount at (a)).
- (4) In this paragraph—

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- (a) "excess of dividends over distributable profits" in relation to any company, means the excess of the company's dividends at paragraph (a) of the said section 85(6) over its distributable profits at paragraph (b) of that subsection without any adjustment under paragraph (c) of that subsection (relief in respect of overseas trading income),
- (b) "the company's part", in relation to another member, means the proportion of that other member's dividends at paragraph (a) of the said section 85(6) which the part paid to the company bears to the whole,
- (c) references to the part of a reduction in another member's three year surplus which is attributable to the company are references to a part of the reduction which bears to the whole the same proportion as the amount of that other member's dividends at paragraph (a) of the said section 85(6) paid to the company bears to all those dividends except for any paid to persons who are not members of the group of companies.

- (5) An addition to a three year surplus under this paragraph shall be made before any reduction to be made in it under paragraph 1 of this Schedule.

Election for three year surplus instead of one year surplus.

- 3 A company having a three year surplus which is reduced under paragraph 1 of this Schedule may elect that its notional surplus under the said section 85 shall be its three year surplus notwithstanding that its one year surplus is greater.

Three year surplus: subsidiary retaining part of distributable profits.

- 4 (1) Where throughout a period consisting of the whole or a part of the three financial years 1966, 1967 and 1968 a company is a member of a group of companies and is the beneficial owner of part of the ordinary share capital of another member of the group (in this paragraph called "the appropriate part"), and—
- (a) the amount of the dividends on ordinary share capital paid by that member to the company in the period is less than
 - (b) the appropriate part of that member's distributable profits arising in the period, after deducting the amount required to meet dividends which are not on ordinary share capital and which are paid by that member in the period,
- the distributable profits of the company to be taken into account as franked investment income or group income under paragraph (b)(i) of the said section 85(6) shall not include the dividends at (a) above but shall include a sum equal to that at (b) above.
- (2) For the purpose of arriving under this paragraph at a member's distributable profits arising in any period—
- (a) the distributable profits of any financial year which falls wholly or partly within the period shall be ascertained on the principles set out in subsection (6)(b) of the said section 85 for ascertaining the distributable profits for the three financial years, and shall be so ascertained whether or not the member is entitled to relief by reference to a three year surplus,
 - (b) if part only of the financial year falls within the period, the distributable profits of that financial year shall be apportioned on a time basis according to the respective lengths of its parts which do and do not fall within the period, and

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- (c) where the member itself is the beneficial owner of part of the ordinary share capital of a company which is another member of the group, or which is the member's subsidiary company, account shall be taken under paragraphs (a) and (b) above of the amendment of the said subsection (6)(b) made by sub-paragraph (1) of this paragraph, attributing under paragraph (a) above to the whole of any financial year any amount included by virtue of that amendment in that member's franked investment income or group income as the appropriate part of that other company's distributable profits of that financial year, or of any part of that financial year.
- (3) Sub-paragraph (1) above shall not apply if the other member has a notional surplus which is a three year surplus which is reduced under paragraph 1 of this Schedule.
- (4) In this paragraph "ordinary share capital" has the same meaning as in section 42(3) of the Finance Act 1938 and if the appropriate part of the other member's ordinary share capital is different in different periods in the three financial years this paragraph shall apply to those periods separately.
- (5) For the purposes of this paragraph—
 - (a) any dividend paid (in the sense of section 89(4) of the Finance Act 1965) in the first five days of April 1969 shall be regarded as paid on 31st March 1969,
 - (b) any dividend paid (in that sense) in the first five days of April 1966 shall be left out of account.
- (6) Where a three year surplus falls to be ascertained under subsection (7) of section 85 of the Finance Act 1965 (winding up of company) for references in this paragraph to the three financial years there shall be substituted references to the period mentioned in that subsection.

Three year surplus: subsidiary paying dividends in 1965-66 in excess of standard amount.

- 5 (1) Where dividends received by a company which is a member of a group in the year 1965-66 include dividends from a member of the same group of companies, and that member pays in the year a gross amount of dividends which exceeds its standard amount, then there shall be excluded from the dividends taken into account under subsection (6)(d) of the said section 85 (which fixes the amount of the tax ultimately borne by the company) a part of the dividends received from that member which bears to the whole the same proportion as the excess bears to all the dividends paid by that member in the year 1965-66.
- (2) Any amount of a dividend paid by a member of a group of companies excluded under sub-paragraph (1) above shall, for the purposes of the said subsection (6)(d) as it applies to that member, be treated as if it had not been paid.
- (3) Sub-paragraph (1) above shall not apply unless the gross amount of dividends received by the company in the year 1965-66 from members of the same group of companies exceeds one-third of the gross amount of the dividends received by the company in its standard period from companies then being members of the same group of companies (or, if the standard period is less than three years, an amount bearing to the dividends last-mentioned the same proportion as one year bears to the standard period), and where any dividends would fall to be excluded under sub-paragraph (1) above the company may elect that the exclusion shall be of such part

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of the dividends received from members of the same group as is equal to the excess referred to in this sub-paragraph:

Provided that this sub-paragraph shall not apply where, because the company commenced to carry on business at a time later than the beginning of December 1964, or for any other reason, the company has no standard period.

- (4) Where the company exercises the right of election under sub-paragraph (3) above, sub-paragraph (2) above shall have effect as if the amount out of the dividends paid by any other member of the group of companies excluded under sub-paragraph (1) above were the proportion of the excess referred to in sub-paragraph (3) above which is the same as the proportion which—
- (a) the amount of the dividends paid to the company by that member in the year 1965-66 bears
 - (b) to the aggregate of the amount of the dividends paid to the company in that year by all members of the group.
- (5) This paragraph shall be construed in accordance with section 83 of the Finance Act 1965.

PART II

THE ONE YEAR SURPLUS

Companies carrying on life assurance businesses.

- 6 The one year surplus of a company carrying on life assurance business shall be computed without regard to any such part of dividends or other income from investments held in connection with its life assurance business as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders, and without regard to the tax on such part of such income.

Elections as respects double taxation relief.

- 7 (1) If a company so elects, its one year surplus shall be computed in accordance with sub-paragraphs (2) and (3) below.
- (2) In arriving at the amount of profits tax and income tax to be taken into account under paragraphs (b) and (c) of subsection (3) of the said section 85, it shall be assumed that paragraph 2(2) of Schedule 16 to the Income Tax Act 1952 provides for credit for foreign tax to be first applied in reducing the amount of income tax chargeable in respect of the income and, so far as it cannot be so applied, in reducing the profits tax chargeable in respect of the income (instead of applying the credit first against profits tax and then against income tax).
- (3) In arriving at the fraction defined at the end of the said subsection (3) (income tax for 1965-66 divided by that plus corporation tax for the financial year 1965), and in applying subsection (8) of the said section 85 (under which any one year surplus is to be disregarded if that income tax is not greater than that corporation tax)—
- (a) so far as any tax at subsection (3)(a) of the said section 85 consists of tax at a net United Kingdom rate (that is to say a rate less than the standard rate of 8s. 3d. for the year 1965-66) that tax shall be increased by applying the ratio

A

B

where " A " is the said standard rate of 8s. 3d. and " B " is the said net United Kingdom rate, and

(b) any credit for foreign tax which is allowable against United Kingdom income tax or corporation tax shall be disregarded.

(4) In this paragraph " credit for foreign tax " means credit allowable by virtue of arrangements made under section 347 of the Income Tax Act 1952, or by way of relief under section 348 of that Act.