

SCHEDULES

SCHEDULE 22

BROADCASTING: ADDITIONAL PAYMENTS BY PROGRAMME CONTRACTORS

PART I

AMENDMENT OF BROADCASTING ACT 1981

- 1 (1) Section 32 of the Broadcasting Act 1981 (rental payments by programme contractors) shall be amended as follows.
- (2) The following Table shall be substituted for the Table in subsection (4)—

“TABLE

RATES OF ADDITIONAL PAYMENTS

	<i>Rate for determining amount of additional payments</i>
<i>First category profits</i>	
For so much of the first category profits for the accounting period as does not exceed the free slice for those profits.	Nil.
For so much of the first category profits for the accounting period as exceeds the free slice for those profits.	The first category rate.
<i>Second category profits</i>	
For so much of the second category profits for the accounting period as does not exceed the free slice for those profits.	Nil.
For so much of the second category profits for the accounting period as exceeds the free slice for those profits.	The second category rate.”

- (3) After subsection (4) there shall be inserted the following subsection—

“(4A) For the purposes of this section—

"first category profits" and "second category profits" shall be determined in accordance with the provisions of Schedule 4 to this Act;

"first category rate" means—

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- (a) in relation to additional payments payable by virtue of subsection (1)(b)—
 - (i) nil, in the case of persons who are DBS programme contractors or DBS teletext contractors ; and
 - (ii) 45 per cent, in any other case ; and
 - (b) in relation to additional payments payable by virtue of subsection (2)(b), nil;
 "free slice" means—
 - (a) in relation to first category profits, £800,000 or 2-8 per cent, of the advertising receipts for the accounting period (whichever is the greater); and
 - (b) in relation to second category profits, the amount (if any) by which the free slice in relation to first category profits exceeds the first category profits for the accounting period ; and
 "second category rate" means—
 - (a) in relation to additional payments payable by virtue of subsection (1)(b)—
 - (i) nil, in the case of persons who are DBS programme contractors or DBS teletext contractors ; and
 - (ii) 22-5 per cent, in any other case ; and
 - (b) in relation to additional payments payable by virtue of subsection (2)(b), nil.”
- (4) In subsection (5) for the words from "sum", where it first occurs, to "above" there shall be substituted the words "relevant sum mentioned in subsection (4A)".
- (5) In subsection (8) for the words "subsections (4)" there shall be substituted the words "any of the provisions of subsections (4), (4A)".
- (6) In subsection (9)—
- (a) the words "to amend subsections (4) and (5)" shall be omitted;
 - (b) for the words "those subsections", where they first occur, there shall be substituted the words "the provisions in question";
 - (c) for the words "those subsections", where they next occur, there shall be substituted the words "those provisions"; and
 - (d) for paragraph (c) there shall be substituted the following paragraphs—
 - “(c) only in their application in relation to first category profits of all, or specified, kinds ;
 - (d) only in their application in relation to second category profits of all, or specified, kinds ; or
 - (e) differently in their application as mentioned in paragraphs (a) to (d) respectively”.
- 2 (1) Section 34 of the Act of 1981 (instalments payable on account by programme contractors in respect of additional payments) shall be amended as follows.
- (2) In subsection (2)(b) the words from "when the" to the end shall be omitted.
- (3) For subsection (3) there shall be substituted the following subsection—
- “(3) Where any amount falls to be paid to a programme contractor to adjust any overpayment made by him, that amount shall be paid to him—

- (a) if the contract is for the supply of programmes to be broadcast for reception in areas or localities all of which are in Great Britain, out of the Consolidated Fund of the United Kingdom;
- (b) if the contract is for the supply of programmes to be broadcast for reception in areas or localities all of which are in Northern Ireland, out of the Consolidated Fund of Northern Ireland; and
- (c) if the contract is one which falls within subsection (2) of section 33, out of each of those Funds, apportioned in the same way as receipts are apportioned under subsection (3)(c) of that section.”
- 3 (1) Section 35 of the Act of 1981 (provision for supplementing additional payments) shall be amended as follows.
- (2) In paragraph (a) of subsection (1) the words "or is" shall be inserted after the word "is", where it last occurs.
- (3) For paragraph (b) of that subsection there shall be substituted the following paragraph—
- “(b) the deficiency is, or would be, wholly or mainly attributable to either or both of the following—
- (i) excessive expenditure forming part of the expenditure by reference to which those additional payments fall to be calculated;
- (ii) in the case of second category profits, the receipt of consideration for the provision of any programme which is less than that which the contractor would have received had the transaction in question been in all respects at arm's length.”
- (4) In subsection (4), for the words "the accounting period to which it relates" there shall be substituted the words "the period of six months beginning with the date on which the programme contractor furnishes to the Authority, in accordance with the terms of his contract as a programme contractor, a copy of his audited accounts for the accounting period to which the order relates".
- (5) After subsection (2) there shall be inserted the following subsection—
- “(2A) In determining, for the purposes of subsection (1) of this section, whether in the case of a programme contractor any consideration received by him for the provision of any programme is less than that which the contractor would have received had the transaction in question been in all respects at arm's length, the Authority or the Secretary of State, as the case may be, shall have regard to such matters as they or he may consider relevant, and in particular to any available information as to—
- (a) the consideration received for the provision by the contractor of the programme in other comparable markets;
- (b) the consideration received by that or any other programme contractor for the provision of other comparable programmes in the same market.”
- 4 For paragraph 2 of Schedule 4 to the Act of 1981 there shall be substituted the following paragraphs—
- “2 A programme contractor's first category profits for an accounting period shall be ascertained in accordance with paragraph 2A and his second

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category profits for that accounting period shall be ascertained in accordance with paragraph 2B.

First category profits

- 2A (1) First category profits shall consist of the excess of relevant first category income over relevant first category expenditure.
- (2) In this Schedule "relevant first category income" means—
- (a) in relation to any programme contractor other than a DBS programme contractor or DBS teletext contractor, any income of his which is attributable to the provision by him of any programme for broadcasting on ITV, the Fourth Channel or a local sound broadcasting service (whether that programme is provided in the first place to the Authority or to any other person); and
 - (b) in relation to any DBS programme contractor or DBS teletext contractor, any income of his which is attributable to the provision by him to the Authority, in accordance with the terms of his contract as a DBS programme contractor or (as the case may be) DBS teletext contractor, of any programme for broadcasting in the Authority's DBS service to which his contract with the Authority relates.
- (3) Without prejudice to the generality of sub-paragraph (2), "relevant first category income" includes—
- (a) advertising receipts;
 - (b) income attributable directly or indirectly to any publication whose content (other than advertising) is wholly, or mainly, connected with programme schedules and scheduled programmes; and
 - (c) such part of any income which—
 - (i) accrues to any subsidiary of the programme contractor concerned; and
 - (ii) would be relevant first category income of that contractor if he and the subsidiary were a single programme contractor;
 as, in the opinion of the Authority, should be attributed to the contractor as reflecting his financial interest in the subsidiary.
- (4) In this Schedule "relevant first category expenditure" means any expenditure of the programme contractor concerned which is properly chargeable to revenue account and which is incurred in connection with the provision by him of—
- (a) programmes of a kind mentioned in sub-paragraph (2)(a), in the case of a contractor who is not a DBS programme contractor or DBS teletext contractor; or
 - (b) programmes of a kind mentioned in sub-paragraph (2)(b), in the case of a DBS programme contractor or DBS teletext contractor.
- (5) Without prejudice to the generality of sub-paragraph (4), "relevant first category expenditure" includes—

- (a) expenditure in connection with the sale of rights to insert advertisements in programmes;
 - (b) expenditure in connection with any publication whose content (other than advertising) is wholly, or mainly, connected with programme schedules and scheduled programmes;
 - (c) such part of any expenditure which—
 - (i) is incurred by any subsidiary of the programme contractor concerned; and
 - (ii) would be relevant first category expenditure of that contractor if he and the subsidiary were a single programme contractor;
 as, in the opinion of the Authority, should be attributed to the contractor as reflecting his financial interest in the subsidiary; and
 - (d) in the case of a DBS programme contractor or DBS teletext contractor, any expenditure incurred by him in connection with the provision of the satellite transponder.
- (6) In ascertaining relevant first category income or relevant first category expenditure no account shall be taken of interest on any loan.
- (7) Where relevant first category income consists of advertising receipts, it shall be attributed to accounting periods in accordance with the foregoing provisions of this Schedule and the same principle shall be followed in relating other items of relevant first category income, and items of relevant first category expenditure, to accounting periods.
- (8) In this paragraph "programme" means—
- (a) in the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), a television programme; and
 - (b) in its application in relation to the additional payments mentioned in section 32(2)(b), a local sound broadcast.

Second category profits

- 2B (1) Second category profits shall consist of the excess of relevant second category income over relevant second category expenditure.
- (2) In this Schedule "relevant second category income" means any income of the programme contractor concerned which is not relevant first category income but which accrues to him in connection (directly or indirectly) with the provision by him, for broadcasting, distribution or showing (whether or not within the United Kingdom)—
- (a) in the case of a programme contractor other than a DBS programme contractor or DBS teletext contractor, of any programme provided by him for broadcasting on ITV, the Fourth Channel or a local sound broadcasting service, or intended by him to be so provided; or
 - (b) in the case of a DBS programme contractor or DBS teletext contractor, of any programme broadcast in the Authority's DBS

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service to which his contract with the Authority relates, or intended to be so broadcast.

- (3) Without prejudice to the generality of sub-paragraph (2), "relevant second category income" includes any income which—
- (a) accrues to any person connected with the programme contractor concerned; and
 - (b) would be relevant second category income of that contractor if he and that person were a single programme contractor.
- (4) In this Schedule "relevant second category expenditure" means any expenditure properly chargeable to revenue account which is not relevant first category expenditure but which is incurred by the programme contractor concerned in connection (directly or indirectly) with the provision by him of any programme of a kind mentioned in sub-paragraph (2)(a) or (as the case may be) (b) above.
- (5) Without prejudice to the generality of sub-paragraph (4) above, "relevant second category expenditure" includes any expenditure which—
- (a) is incurred by any person connected with the programme contractor concerned; and
 - (b) would be relevant second category expenditure of that contractor if he and that person were a single programme contractor.
- (6) In ascertaining relevant second category income or relevant second category expenditure no account shall be taken of interest on any loan.
- (7) Items of relevant second category income and items of relevant second category expenditure shall be attributed to accounting periods in accordance with the foregoing provisions of this Schedule.
- (8) In this paragraph "programme" means—
- (a) in the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), a television programme; and
 - (b) in its application in relation to the additional payments mentioned in section 32(2)(b), a local sound broadcast.

Carry forward of certain losses

- 2C (1) Where, in any accounting period, the relevant first category expenditure of a programme contractor exceeds his relevant first category income sub-paragraph (3) shall apply.
- (2) Where, in any accounting period, the relevant second category expenditure of a programme contractor exceeds his relevant second category income sub-paragraph (4) shall apply.
- (3) Where this sub-paragraph applies—
- (a) the excess shall, if the programme contractor has any relevant second category profits for the accounting period, be set against relevant second category income for that period as if the excess were relevant second category expenditure; and

- (b) if any part of the excess then remains it shall be carried forward to the following accounting period and treated as relevant first category expenditure for that period.
- (4) Where this sub-paragraph applies—
- (a) the excess shall, if the programme contractor has any relevant first category profits for the accounting period, be set against relevant first category income for that period as if the excess were relevant first category expenditure; and
- (b) if any part of the excess then remains it shall be carried forward to the following accounting period and treated as relevant second category expenditure for that period.
- (5) When a programme contractor's contract with the Authority comes to an end, no losses incurred at any time during the currency of that contract may be carried forward under this paragraph and set against income attributable to any subsequent contract between him and the Authority.”
- 5 In paragraph 3 of Schedule 4 to the Act of 1981—
- (a) in sub-paragraph (1)(a), for the words "relevant income and relevant expenditure" there shall be substituted the words "income and expenditure of any category" and for the words "the profits" there shall be substituted the words "relevant category of profits"; and
- (b) in sub-paragraph (1)(b), for the words "the profits" there shall be substituted the words "any category of profits".
- 6 In paragraph 4(1) of Schedule 4 to the Act of 1981, after the word "profits", in paragraph (b) there shall be inserted—
- “or
- (bb) the category in which any profits fall.”.
- 7 In paragraph 7 of Schedule 4 to the Act of 1981, the following sub-paragraph shall be inserted after sub-paragraph (1)—
- “(1A) Without prejudice to the generality of sub-paragraph (1) above, the duty imposed on the Authority by that sub-paragraph includes the duty to impose, so far as is reasonably practicable, such requirements as will enable the Authority to determine the amounts (if any) which, in relation to any programme contractor, are to be treated as relevant second category income and relevant secondary category expenditure by virtue, respectively, of subparagraphs (3) and (5) of paragraph 2B.”
- 8 (1) Paragraph 9 of Schedule 4 to the Act of 1981 shall be amended as follows.
- (2) In sub-paragraph (1), the following shall be substituted for the definition of subsidiary—
- “subsidiary”, in relation to any person, means a company in which that person (whether alone or jointly with one or more persons and whether directly or through one or more nominees) holds, or is beneficially entitled to, 10 per cent, or more of the equity share capital, or possesses 10 per cent, or more of the voting power”.
- (3) The following sub-paragraphs shall be added at the end—

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- “(3) For the purposes of this Schedule a person shall be taken to be connected with a programme contractor—
- (a) if he is a subsidiary of the contractor;
 - (b) where the contractor is a company, if he is a person who (whether alone or jointly with one or more persons and whether directly or through one or more nominees) holds, or is beneficially entitled to, 10 per cent, or more of the equity share capital, or possesses 10 per cent, or more of the voting power; or
 - (c) where any other person is connected with the contractor concerned by virtue of paragraph (b) above, if he is a company in which that other person (whether alone or jointly with one or more persons and whether directly or through one or more nominees) holds, or is beneficially entitled to, 10 per cent, or more of the equity share capital, or possesses 10 per cent, or more of the voting power;
- but does not include any person whose trade consists wholly or mainly of the distribution of programmes by wireless telegraphy or cable.
- (4) Where the same person falls within more than one category of programme contractor, the definitions of "first category rate" and "second category rate" in section 32(4A) shall not have the effect of applying the lower or lowest rate in respect of all of his first category profits or (as the case may be) all of his second category profits but, subject to section 32(6), those profits shall be apportioned, and the provisions of this Act applied, in such manner as the Authority consider appropriate with a view to securing that the overall amount payable by him by way of additional payments is, as near as may be, equal to the aggregate of the amounts which would be so payable if there were as many separate programme contractors as there are categories of programme contractor within which he falls.”